

## Colloquy

1 SUPREME COURT NEW YORK COUNTY  
 TRIAL TERM PART 45  
 2 -----X  
 THE PEOPLE OF THE STATE OF NEW YORK x IND#  
 3 x 3534/08  
 x  
 4 -against- x  
 x CHARGE:  
 5 MARK RICHARDSON, x MURD. 2  
 x  
 6 Defendant. x  
 -----X  
 7 JURY TRIAL CONTINUING

8 111 Centre Street  
 New York, N.Y. 10013  
 9 September 21, 2011  
 10

11 B E F O R E:

12 HONORABLE BRUCE ALLEN,  
 JUSTICE OF THE SUPREME COURT  
 13  
 14

15 A P P E A R A N C E S; (Same as previously noted)

16 -----

17 THE COURT CLERK: Case on trial continued. The  
 18 People of the State of New York against Mark Richardson. The  
 19 defendant, his attorneys, and the assistant district attorney  
 20 are present. The jury is not present at this time.

21 THE COURT: Thank you very much. Mr. Bogdanos.

22 MR. BOGDANOS: Yes. Just one matter, Your  
 23 Honor. Mr. Klein and I obviously understand Your Honor's  
 24 ruling with regard to February 5th. Effectively, if the door  
 25 is opened, the door is opened.

Glenn J. Merola, Sr. Court Reporter

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1 But Mr. Klein, I think fairly, has asked that the  
2 existence of police interaction with Mr. Richardson on February  
3 5th be introduced for purposes that Mr. Klein will put to use  
4 for his defense.

5 As I said before, the People's position, is that's a  
6 fair request and we're going to do it on direct. I just want  
7 to notify the Court and Counsel, I know Mr. Klein sometimes  
8 doesn't like, what he perceives to be leading questions, I am  
9 going to gently lead the detectives into and out of February  
10 5th with a series of four, five questions, so that we don't get  
11 into any of the substance.

12 So, I just wanted all parties on alert as to that,  
13 and then I am just going to move into it and get off of it.

14 MR. KLEIN: I think that's appropriate.

15 I just would hope that, there's some debate about  
16 whether they were bringing him in as a suspect or a witness, so  
17 I would hope there would be no leading question that says we  
18 were bringing him in kind of as a witness in the case.

19 That there be no asking for his subjective state of  
20 mind, that is of the detective's state of mind, why they were  
21 doing it and I don't plan to go into it.

22 MR. BOGDANOS: Well, there is going to be one  
23 question as to: You planned to interview Mr. Richardson?  
24 Why? We didn't know. We had no idea what his involvement  
25 was. This is the answer, I believe, we're going to get.

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1           We didn't know what the involvement was but we just  
2   wanted to interview him as someone that may have had  
3   information about the case. Did you interview him? Yes.  
4   February 5th. That's it.

5           THE COURT: If that's going to be the answer why  
6   don't you lead them into that answer as opposed to asking a  
7   "why" question in front of the jury. The answer might be  
8   different.

9           MR. BOGDANOS: I will be happy to do it.

10          MR. KLEIN: The problem -- that's not really  
11   accurate. The problem is that opens up the whole issue of why  
12   they were actually interviewing him.

13          As a matter of fact, they had got a whole bunch of  
14   information together by then, and they had an accusatory  
15   statement by Desiree Allen implicating the defendant in the  
16   crime in terms of, as you know, basically she says he had  
17   confessed to it and said words to the effect of, don't let what  
18   happen to her happen to you, and tried to strangle me. That's  
19   what the real truth of that is.

20          THE COURT: Well, how would you have it  
21   phrased?

22          MR. KLEIN: I wouldn't have him say anything.  
23   We didn't know what we had, or anything like that, or any why.  
24   Just? Did you bring him in? Did you interview him? Did you  
25   then bring him home?

## PROCEEDINGS

1           If you want to ask how long was he there. I don't  
2 know what the thought is, an hour, something like that. But  
3 none of the "why" or the "wherefore" or what the thought was  
4 around it.

5           MR. BOGDANOS: One problem with that argument.  
6 Again, Mr. Klein is trying to get in some but not the totality  
7 of the circumstances. The truth, as told to me by the  
8 detectives, as told by the detectives to Mr. Klein, at the  
9 hearing, under oath, is they didn't know on February 5th what  
10 his involvement was and he was just another person, like  
11 everybody else in this case, Sidney Gotler, Anthony Hall, I am  
12 not going to go into any of that but that's the truth.

13           The truth is he did go home. They didn't know if he  
14 was a suspect or a witness. And, in fact, were kind of hoping,  
15 I am not going to get into, they were hoping he was a witness,  
16 they had him and they thought he would give them a lead in  
17 getting to the murderer.

18           So, the truth, as in indicated before, is exactly  
19 what I said, which is when you -- why were you doing this, and  
20 I will lead him through it. At this point what did you know  
21 about Mr. Richardson? We identified him from the video. And  
22 to us he was just a person who might have information about the  
23 murder of Helen Abbott. Period.

24           I am happy to go into the entire day of February 5th  
25 if that's what the defense wants but you can't have it both



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1 ways.

2 MR. KLEIN: I am not trying to have it both  
3 ways. But when Mr. Bogdanos says, Judge, the truth is, and  
4 then here was an answer to, was given to Mr. Klein during the  
5 hearing, nothing establishes that as the truth.

6 I understand in the hearing, I was there, he said we  
7 didn't really know what we had. We weren't just interested in  
8 speaking to him as a witness. On the other hand, he said,  
9 things like, you know, I didn't care what he said because I  
10 just wanted to lock him into a statement. Any statement he  
11 gave was good for me. Even if he locked himself into an alibi  
12 because I knew I had him on video.

13 That doesn't really sound like seeing someone as a  
14 witness. Because, obviously, if someone is a witness the last  
15 thing you want to do is lock them into a statement that then  
16 your stuck with forever, right? Especially if it may not be  
17 true.

18 So, if there's a question as to what did they really  
19 have him there for now, we know what the dangers are. And Mr.  
20 Bogdanos says you can't go into any of those areas or you have  
21 to go into it completely. You drawled on that but then it goes  
22 both ways, we have to stay out of it, we can't can ask him for  
23 his thought process and there is no reason to go into it in  
24 this time. There's just none. It's irrelevant.

25 MR. BOGDANOS: A speculating jury is a dangerous

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1 jury. Mr. Klein wants the jury to know that there was police  
2 interaction with Mr. Richardson and the detectives on February  
3 5th for his purposes. Yet, he doesn't want the jury to know  
4 that the nature of that going in was the detectives didn't know  
5 what they had or what Mr. Richardson's involvement was.

6 Truth, not truth, bad turn of a phrase on my part.

7 As a matter of record.

8 MR. KLEIN: Okay. They --

9 MR. BOGDANOS: Let met finish.

10 MR. KLEIN: Go ahead. Sorry.

11 MR. BOGDANOS: So that's all I am asking, if Mr.  
12 Klein wants the February 5th, which he does, nobody wants a  
13 speculating jury: Wait. There's interrogation on February  
14 5th. I wonder what was it about. I wonder why they had him.  
15 Umm. All those things. Why weren't we being told that.

16 Rather than have any of the speculation a simple one  
17 question and answer will put all that to rest. He was someone  
18 we thought may have information about the homicide. We  
19 interviewed him. Brought him home. End. And we move on.

20 MR. KLEIN: Judge, they introduced the video  
21 clip. It's in the video clip. If they didn't want there to be  
22 any thought about the February 5th interaction then they could  
23 have said, Your Honor, we have a 16 minute clip the rest is  
24 suppressed but these 16 minutes talk about something that's  
25 never going to be explained so take it out.

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1           They decided not to put that in. They can't now say  
2   so the jury may speculate about something that we put into  
3   evidence so we have to be able to put our spin on what it was  
4   so if they are going to think about it they think about it in a  
5   way that's appropriate to the prosecution's position.

6           I just don't think that's fair. And there's no  
7   relevance.

8           THE COURT: Well, I do think the jury is  
9   entitled to hear at least this, and you may ask this question  
10   Mr. Bogdanos: Did you have some basis for speaking to him on  
11   that day. Without saying what the basis was.

12           In other words, so it wasn't out of the blue, but,  
13   yes, they did speak to him.

14           MR. BOGDANOS: And so no answer -- so the  
15   answer: We thought he might have information about the  
16   homicide.

17           THE COURT: That I think is a dangerous answer.

18           MR. BOGDANOS: Really?

19           THE COURT: Yes. Based on your investigation  
20   that you have some basis to speak to him.

21           MR. BOGDANOS: Well, yeah. I mean --

22           THE COURT: That's enough.

23           MR. BOGDANOS: Hold on, Judge. You are not  
24   saying that I can't say they saw him on the video? I mean  
25   that's the basis. What -- you're arguing two different things

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1 now.

2 THE COURT: You can first bring out: Did you  
3 see him on the video?

4 MR. BOGDANOS: And identify him.

5 THE COURT: Based on your investigation did you  
6 have some reason to talk to him? And that's it. Not the  
7 particulars.

8 MR. BOGDANOS: Okay. I got it.

9 MR. KLEIN: Okay. Now, Judge I also, I made it  
10 very clear, that I am not challenging in any way the propriety  
11 of the arrest of the defendant. I made that clear on the  
12 record. I made it clear in my opening statement. And I am  
13 making it clear again here.

14 Nor have I, in any way, launched a thoroughness in,  
15 attack, excuse me, on the thoroughness of the police  
16 investigation. That is anything the detective did. I have  
17 raised some issue with forensic biology about things they did  
18 in the lab but nothing about the work of these police officers,  
19 these police detectives, and I don't plan to.

20 However, I am concerned about, what often happens  
21 when police detectives come in and testify, is they talk about  
22 all the work that they did and then reasons they had about it  
23 and thoughts they had about it, and they then get to a  
24 conclusion, that after doing all this work and speaking to all  
25 these people, I then arrested the defendant, Mark Richardson.

Glenn J. Merola, Sr. Court Reporter

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1           And it then sounds to a jury like, obviously, they  
2 spoken to all of these people and, therefore, it's clear that  
3 the evidence really points at the defendant.

4           And they can -- I don't know, they may testify and  
5 say, like we spoke to Anthony Hall and after that we arrested  
6 Mark Richardson. We spoke to, I don't know, Desiree Allen, and  
7 after speaking with her we arrested Mark Richardson.

8           And that makes it sound like Mark Richardson was  
9 arrested in part because all these people said something about  
10 him, and Anthony Hall, who they may say we didn't arrest,  
11 somehow's able to convince him that he wasn't guilty, and all  
12 of that is inappropriate.

13           Not just in appropriate but I think violates the  
14 defendant's confrontation rights under the U.S. and New York  
15 Constitution and is irrelevant really to any issue here.

16           The propriety of the arrest is completely irrelevant  
17 and the District Attorney's Office shouldn't be able to use, in  
18 the guise of saying, I want to know that they did a good job,  
19 the right to bring in that kind of evidence.

20           Whether they did a good job or not a good job isn't  
21 the issue. The issue in this case is whether or not he's the  
22 person that's guilty of the crime and, therefore, I ask that it  
23 be -- not be permitted that kind of testimony.

24           MR. BOGDANOS: Again, there's two separate  
25 things going on in here with Mr. Klein's argument. One isn't

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1 going to happen, in this courtroom, from this assistant  
2 district attorney. And the other is Mr. Klein saying, oh, by  
3 the way, I don't want you to do anything at all to show the  
4 jury that the detectives acted reasonably in this  
5 investigation.

6 First, at no point on questioning of any detective am  
7 I going to say anything remotely resembling: And then you  
8 interviewed this person, this person, and then you arrested the  
9 defendant. I'm not going to do that. So that's just jousting  
10 at shadows. That's not going to happen. Put that aside.

11 Now, Mr. Klein doesn't want me to be allowed on  
12 direct examination to say: Detective, did you do an  
13 investigation? Whether Mr. Klein attacks the officers or not,  
14 the People, who have the burden of proof, have the right to  
15 present to the jury the reasonableness of their actions  
16 throughout the course of the investigation.

17 The jury does not need an overt argument on the part  
18 of Mr. Klein, in words, sum or substance, saying and they  
19 focused like a laser right on Mark Richardson from day one to  
20 the exclusion of all the others. The jury doesn't need him to  
21 say that for them to be concerned about that.

22 Again, speculating juries are an anathema to justice  
23 and so the People have every intention of briefly, up front,  
24 having the detectives explain to the jury exactly what their  
25 investigation was in broad terms.

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1 But at no point will there be any causal connection  
2 related between what they did and whom they spoke to and then  
3 suddenly pounce on Mark Richardson. That is not going to  
4 happen.

5 But it is absolutely not fair, unless Mr. Klein is  
6 going to change the burden of proof, or to get up say the  
7 police acted reasonable, affirmatively say that, and say that  
8 they didn't focus too early on Mark Richardson, unless he's  
9 going to say all of those things, how is that in any way fair  
10 to the People, who still bear the burden whether he overtly  
11 says it or not.

12 So, I'm sorry, Judge, again, I submit that is not a  
13 reasonable approach to the People's manner in which we meet our  
14 burden of proof.

15 MR. KLEIN: Judge, first of all, when I said  
16 that the concern I had about, here's what we did and then you  
17 arrested Mark Richardson, I obviously wasn't saying that I  
18 thought Mr. Bogdanos was going to do it in that form but that  
19 would be the point that the jury would finally get and that's a  
20 very dangerous point, obviously.

21 Whether it's asked specifically, you spoke to Anthony  
22 Hall and then you arrested Mark Richardson, I don't assume he's  
23 going to do that. But that would then be the possible guise of  
24 the argument if all of that information is brought out and then  
25 it was just, and you arrested Mark Richardson. However, he

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1 does it that's what the jury would think.

2 With regard to him saying I have to show the  
3 reasonableness of the police investigation because otherwise  
4 the jury is going to speculate about the focus on Mark  
5 Richardson. I don't think there's going to be any speculation  
6 about that at all.

7 Whether that's a reason to let in evidence otherwise  
8 that wouldn't come into evidence, I mean, everyone is conceding  
9 here there was reason to focus on Mark Richardson and there's  
10 going to be no argument by me, and the district attorney knows  
11 that from my opening statement, that it was appropriate to  
12 focus on Mark Richardson.

13 So, to bring in evidence, to prevent the jury from  
14 doing that, is really can't be for a necessary purpose.

15 THE COURT: Thank you both. You will have to  
16 object if you believe it to be appropriate Mr. Klein.

17 In fact, I think it's time to get to witnesses. Are  
18 all the jurors here?

19 THE COURT OFFICER: Yes.

20 THE COURT: Are both sides ready?

21 MR. KLEIN: Yes.

22 MR. BOGDANOS: Yes, Judge.

23 THE COURT: May we have the jury, please.

24 MR. BOGDANOS: And while we're getting the jury  
25 I need to talk to the detectives as to your ruling because they



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1 don't expect that.

2 MR. KLEIN: I have one other point. In sorry.

3 It has to do with -- Donna Torres is going to testify  
4 apparently about some statements that the defendant made after  
5 the February 5th interview. The next day the defendant calls  
6 Donna Torres and there's discussion in that phone conversation  
7 about what they have talked about on February 5th, okay, they  
8 both say things about what was I told before, what did I say  
9 before, and all of that.

10 So I assume that's going to be gone into and neither  
11 side is going to think in any way that opens the door to the  
12 February 5th conversation coming in.

13 MR. BOGDANOS: Correct.

14 MR. KLEIN: Okay. Because Donna Torres does  
15 say, the defendant said, you told me yesterday. And she says  
16 what we said yesterday was that, well, come in, but then we're  
17 not going to go into the February 5th conversation --

18 THE COURT: He's agreed.

19 MR. KLEIN: -- What they said.

20 THE COURT: He's agreed.

21 MR. BOGDANOS: I agree.

22 THE COURT: Okay. The jury.

23 THE COURT OFFICER: Jury entering!

24 (The jury enters the courtroom.)

25 THE COURT CLERK: Case on trial continued. The

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1 People of the State of New York against Mark Richardson. The  
2 defendant, his attorneys, and the assistant district attorney  
3 are present. Will both sides stipulate all jurors are present  
4 and properly seated.

5 MR. BOGDANOS: Yes.

6 MR. KLEIN: Yes.

7 THE COURT: Thank you, very much. And good  
8 morning, ladies and gentlemen. Mr. Bogdanos.

9 MR. BOGDANOS: Yes, Your Honor. The People next  
10 call to the stand Ms. Amy Dorsey. Criminologist.  
11 Criminalist. I'm sorry.

12 (The witness, Amy Dorsey, enters the courtroom,  
13 takes the witness stand, is duly sworn/affirmed in by the  
14 Clerk of the Court, responds to the oath and testifies as  
15 follows:)

16 THE COURT CLERK: Do you solemnly swear or  
17 affirm the testimony you are about to give shall be the  
18 truth, the whole truth, and nothing but the truth, so  
19 help you God?

20 THE WITNESS: I do.

21 THE COURT OFFICER: Have a seat, please. Pull  
22 your chair up to the microphone. In a loud clear voice,  
23 if you could, just state your name and spell your last  
24 name for the record.

25 THE WITNESS: Amy Dorsey. D-o-r-s-e-y.

Glenn J. Merola, Sr. Court Reporter

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1 MR. BOGDANOS: May I inquire?

2 THE COURT: Yes

3 DIRECT EXAMINATION

4 BY MR. BOGDANOS:

5 Q. Good morning, Ms. Dorsey.

6 A. Good morning.

7 Q. Ma'am, would you tell the jury your occupation.

8 A. I am a criminalist with the New York City Police  
9 Department Crime Laboratory.

10 Q. How long have you been with the New York City Police  
11 Department Crime Laboratory?

12 A. Just about ten years.

13 Q. And what are your duties and responsibilities there?

14 A. I work in the Latent Print Development Section and I  
15 process evidence for obtaining DNA samples and for  
16 fingerprints and latent prints.

17 Q. And would you tell the jury the training and  
18 education you have had to qualify you for your current  
19 position?

20 A. I have a bachelor degree in criminology, in criminal  
21 justice from Niagara University. I have masters degree in  
22 forensic science from the University of New Haven. I also was  
23 field trained in crime scene processing, latent print  
24 development by Charlotte Police Department where I worked for  
25 several years and I received one year in-house training, latent

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1 printed development, by a senior criminalist with the New York  
2 City Police.

3 Q. And can you tell the jury approximately how many  
4 evidence examinations you have conducted in your career whether  
5 it was here or in Charlotte?

6 A. Thousands.

7 Q. And can you tell the jury how many times you have  
8 testified previously in courts of law?

9 A. Over seventy-five.

10 Q. In what capacity and in what areas?

11 A. As an expert in latent print development.

12 MR. BOGDANOS: I would offer Ms. Dorsey as an  
13 expert in latent print development for this jury, Your Honor.

14 MR. KLEIN: Okay.

15 THE COURT: Application is granted. Please  
16 continue.

17 BY MR. BOGDANOS:

18 Q. Ms. Dorsey, did there come a time when you received  
19 an assignment of relevance to this case and this jury?

20 A. Yes.

21 Q. Do you remember when that was and how it came about?

22 A. I received this case with Lab Number 08, T Thomas,  
23 0242, March 11th of 2008.

24 Q. And what was the request specifically?

25 A. It was to obtain DNA samples and for latent print

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1 development.

2 Q. From any object in particular?

3 A. It was a lamp.

4 Q. And how did the lamp -- withdrawn. And did you  
5 receive that lamp?

6 A. I did receive it.

7 Q. At your lab?

8 A. Yes.

9 Q. Which is where?

10 A. It's in Jamaica, Queens.

11 Q. And in what condition was it when you received it?

12 A. I received it packaged, signed and sealed.

13 Q. And was it under a particular voucher number?

14 A. Yes.

15 Q. And do you remember that voucher number and if you  
16 need to refer to your report go ahead.

17 A. I would have to refresh my memory.

18 THE COURT: Go ahead.

19 A. I am looking at the typed report that I made in  
20 regard to this case Nancy 986476.

21 Q. Now, I would ask that the witness be shown People's  
22 27 and 28 in evidence. Take a look at those two photographs  
23 and tell the jury if you recognize what's shown in those  
24 photographs?

25 A. Yes. This is the lamp I processed in regard to this

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1 case.

2 Q. Would you tell us -- you said the lamp came in  
3 packaged and sealed. Tell us exactly what you did?

4 A. I received it in one brown paper bag signed and  
5 sealed. And then I will open up the case and make sure that's  
6 what's listed on the voucher, what I am actually receiving,  
7 that it's itemized correctly. In this case it was itemized  
8 correctly. I did receive one lamp.

9 Q. So then what did you do?

10 A. I am going to open it up and I am going to obtain my  
11 DNA samples first and then I am going to do the latent print  
12 processing.

13 Q. Why in that order?

14 A. Because it's assumed that the chemicals that we're  
15 using are going to destroy any DNA so we always try to get the  
16 DNA samples first.

17 Q. And when you say chemicals, the chemicals you use to  
18 make latent prints visible, to find latent prints, those are  
19 the chemicals you are talking about?

20 A. Right. Latent prints are -- latent means hidden. So  
21 that's what we're looking for. The chemicals will make them  
22 seen.

23 Q. So you do DNA first then the prints?

24 A. We obtain the DNA samples first in areas that are  
25 least likely to yield the latent print yet most likely to

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1 obtain a DNA sample and then you will do the chemical analysis.

2 Q. And that's what did you here?

3 A. I did that, yes.

4 Q. Well, do it in your order, tell us exactly what you  
5 did in order to obtain DNA or if DNA swabs from the lamp?

6 A. Well, I am going to examine the lamp and I am going  
7 to, based on my training and experience, determine where I am  
8 going to swab and in this case I took two samples and they were  
9 given a unique identifier.

10 The unique identifier is going to be my initials,  
11 slash S1, meaning Sample 1 and Sample 2. So they were labeled  
12 ADS1, ADS2. S1 was taken from the base of the lamp and it was  
13 a blood like substance. The sample Number 2 was taken at the  
14 bottom most tier of the lamp.

15 Q. And you have the photographs of the lamp in front of  
16 you?

17 A. Yes.

18 Q. We no you are far from us but if you could hold up  
19 the photograph showing the entire lamp and if you could display  
20 it for the jury and show us where -- withdrawn.

21 We have heard about how you get swabs, you did it the  
22 normal way, cotton swab, sterile?

23 A. Yes. We will take a bottle of sterile water and just  
24 moisten the cotton swab and chose an area and rub vigorously.

25 Q. And that's what you did here?

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1 A. I did that.

2 Q. Would you point to the jury where it was you swabbed  
3 on the lamp and then say for the record what it is?

4 A. Sample 1 I took from the base of the lamp, the gold  
5 portion of the lamp, the bottom that you can see. And the  
6 Sample 2, what I am calling the bottom tier, is this bottom  
7 most area here right underneath the body.

8 Q. So, Swab 1, for the record, is the metal portion at  
9 the base and Swab 2 is from the glass?

10 A. Right above the base.

11 Q. Okay. And what did you do with those swabs?

12 A. At the time our standard procedure was to package  
13 them, label them appropriately, and then put them back in with  
14 the packaging, where all the evidence, the lamp, and the  
15 samples, would go down to the office of the Chief Medical  
16 Examiner.

17 Q. And that's what you did here?

18 A. Yes.

19 MR. BOGDANOS: May I show the witness now  
20 People's exhibit 70 and 71 in evidence. If we could start with  
21 71, the smaller of the two. If you could just put it up where  
22 you want. Put it on the monitor. It's fine. It's just going  
23 to be up for a moment. Really one question.

24 BY MR. BOGDANOS:

25 Q. Okay. You see the chart before you, that's 71, Other



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1 Items Tested?

2 A. Yes.

3 Q. And you have seen that or at least a smaller version  
4 of it before coming into court?

5 A. I have.

6 Q. And you had an opportunity to examine it?

7 A. Yes.

8 Q. Do you see on that chart S1, The Swab, Base of Lamp,  
9 S1, you see it up at the top there?

10 A. I see that.

11 Q. That's your swab?

12 A. It is.

13 Q. And you didn't do the test on it so whatever those,  
14 you see where it indicates results on, whether or not there is  
15 DNA, whether or not there is blood?

16 A. Yes.

17 Q. That's not -- you didn't do those tests?

18 A. No. I obtained the samples. That's it.

19 Q. And then the samples go to the Office of Chief  
20 Medical Examiner for further testing?

21 A. That's correct.

22 MR. BOGDANOS: Now, if we can go to 70, please.  
23 And however you want to put it up is fine.

24 BY MR. BOGDANOS:

25 Q. S2 is pretty far up at the top. Can you see it Ms.

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1 Dorsey from where you are?

2 A. I see it.

3 Q. Same question. You have a swab, and in this case  
4 it's called, Swab, Last Tier By Base, S2. Is that your swab  
5 the swab that you just described from the base of the lamp?

6 A. It is.

7 Q. And, again, here you see results relating to Helen  
8 Abbott and others. Not your results?

9 A. No.

10 Q. Again, you forward it on to the Office of Chief  
11 Medical Examiner?

12 A. Yes.

13 MR. BOGDANOS: Thank you. Nothing further on  
14 either of those charts.

15 Q. Okay. So now you taken the swabs?

16 A. Yes.

17 Q. You sealed them up?

18 A. Correct.

19 Q. Now, what do you do?

20 A. After I obtain my DNA samples I am going to start my  
21 four step sequential process for latent print development.

22 Q. And tell us exactly what you did with this lamp?

23 A. Well, the first two steps are prior to any chemical  
24 processing. The very first step always is going to be a visual  
25 examination and what we're looking for there are what we call

## PROCEEDINGS

1 patent prints, P-a-t-e-n-t, and those are prints you can see  
2 with the naked eye. Prints in blood. Prints in oil.  
3 Etcetera. Okay? I did not see any at that point.

4 So I moved on to the second step where I am going to  
5 place this entire lamp under an alternate light source, for  
6 example, ultraviolet. And what we're looking for there are  
7 prints that would naturally floures, be it something in the  
8 sweat, lotion, detergent on the hands, etcetera. I didn't see  
9 any sat this step either.

10 So my third and fourth step is where I am going to  
11 start my chemical analysis. This entire lamp is going to be  
12 placed in a chamber and we're going to superglue, fume it, and  
13 the chemical is actually cyanoacrylate,  
14 C-y-n-a-n-o-a-c-r-y-l-a-t-e. But it's superglue.

15 And we're going to select the right size chamber, put  
16 it in there, and what's in there is a hot plate, a bicker of  
17 water, and a small tin. We heat it all up. We put about a  
18 quarter size dab of superglue, you can actually see it  
19 reacting, the superglue will go up in a puff of smoke while the  
20 evidence is in the chamber.

21 What we're doing there is where making anything  
22 that's on that lamp permanent enough for me to do my fourth and  
23 final process which is to take the lamp out, put it in a hood,  
24 and I am going to spray a chemical on it, that's going to be  
25 used in conjunction with the superglue, so if there are any

PROCEEDINGS

1 latent prints on that lamp I am going to put that lamp  
2 underneath alternate light source because of the superglue and  
3 because of the dye, if there are any they will fluoresce yellow  
4 and in this case I did not see any latent print on this lamp at  
5 all.

6 Q. Under any of your testing?

7 A. That's correct.

8 Q. Does that mean this lamp was never touched?

9 A. Not necessarily.

10 Q. Explain?

11 A. It's hard to see but this lamp is extremely  
12 textured. For optimal results to leave behind a fingerprint  
13 you need a smooth clean dry surface. In this instance all of  
14 the lamp surfaces are textured surfaces which is going to  
15 interfere with the tiny little ridges that we call your  
16 fingerprints.

17 In addition to that, any time you have an item like  
18 this it could be touched numerous times. If you touch  
19 something numerous times chances are prints are going to be  
20 smudged wiped off, etcetera.

21 Q. And, finally, Ms. Dorsey, assume the following facts  
22 for purposes of this question and then at the end of the  
23 question, at the end of that. I am going to ask you how that  
24 can be explained.

25 Assume that before you received this lamp, this lamp

PROCEEDINGS

1 was in an apartment, an and individual, or individuals, took  
2 the lamp -- and you see that when you got the lamp the cord had  
3 already been cut?

4 A. Yes.

5 Q. Assume that the cord was intact. Assume further,  
6 that an individual, or individuals, held the lamp while one of  
7 them cut the cord and then used the -- put the lamp back down  
8 on the sofa and then used that cord that they had just cut to  
9 strangle someone to death.

10 Can you explain why you found no prints on that at  
11 all?

12 A. If the person was holding this lamp?

13 Q. Yes.

14 A. Well, we will determine that it's something called  
15 pressure distortion. If you are holding something very, very  
16 tightly, what we're looking for are the tiny little ridge lines  
17 that we call your fingerprint, as I explained before, anytime  
18 you hold something very, very tight, all those little tiny  
19 lines are going to go into each sort and it's going to be  
20 basically nothing but a smudge.

21 Also, if you are holding something and you are doing  
22 something vigorous, for example, you might have too much  
23 perspiration, which would also not yield any latent print.

24 MR. BOGDANOS: Thank you. Nothing further.

25 THE COURT: Mr. Klein.

CROSS/DORSEY/DEFENSE

1 CROSS EXAMINATION

2 BY MR. KLEIN:

3 Q. Hi Ms. Dorsey.

4 A. Good morning.

5 Q. Couple of questions. You indicated that you got the  
6 lamp, right?

7 A. Yes.

8 Q. It came to your lab, you showed us a picture of it?

9 A. Yes.

10 Q. When something comes into your lab you have to  
11 document the condition it comes in?

12 A. Yes.

13 Q. And you do that in any case, right?

14 A. Right.

15 Q. You did that in this case, right?

16 A. I did that.

17 Q. And you also documents very carefully where you take  
18 an actual swab from, right?

19 A. Yes.

20 Q. And you did that in this case, right?

21 A. Yes.

22 Q. Okay. Because Swab 2, that was taken from the, what  
23 you had described as the broken last glass -- broken last glass  
24 tier of lamp directly above the base, is that right?

25 A. Correct.

CROSS/DORSEY/DEFENSE

1 Q. That's what you wrote down in your report, right?

2 A. Yes.

3 Q. Because that what you took the swab from, right?

4 A. Right.

5 Q. Calls it's also accurate to say that when -- you  
6 didn't break the lamp in any way, right?

7 A. No.

8 Q. Okay. And it's accurate to say that when you  
9 received the lamp it actually came with four broken pieces from  
10 the lamp, right?

11 A. I had indicated that it was broken. I don't recall  
12 it being exactly four. I have several in my notes. Oh. I'm  
13 sorry. I do have four in my written notes. I was looking at  
14 the typed. Excuse me.

15 Q. You first take written notes, right?

16 A. Yes.

17 Q. And then you type them up whenever, right?

18 A. Yes.

19 Q. Okay. But the written notes are what you write down  
20 when you are actually doing the work or close in time?

21 A. Yes.

22 Q. And, basically, to be at least accurate, if not more  
23 accurate, than your typed notes, is that fair to say?

24 A. Yes. In my type I see several. I do see here I have  
25 four exactly.

CROSS/DORSEY/DEFENSE

1 Q. As a matter of fact, because when you received the  
2 lamp there were four broken pieces from the lamp, right?

3 A. Right.

4 Q. And, by the way, did you take a picture of the lamp  
5 when you received it?

6 A. Yes. Any time we obtain DNA samples and we see a  
7 blood like substance, or anything that we can see, we have to  
8 take a record shot of it so I will take overall record shot and  
9 then I will take a close up of it, yes, so that's why you see  
10 two record shots.

11 Q. I'm just going to show you what I think is maybe a  
12 copy of a picture that you took. Do you have a copy of the  
13 picture that you may have taken of the lamp?

14 A. I do, yeah.

15 Q. You do. And that's just -- hold it up so I can see.  
16 All right. Now, that the way, would it be accurate to say,  
17 that's the way you received it?

18 A. That is the way I received it.

19 Q. And that's a fair and accurate depiction of the  
20 condition which you actually got it, right?

21 A. Right. This is the photo I took, yes.

22 Q. Which shows that actually some part of the last tier  
23 above base is broken, is that right?

24 A. Yes. You can see it here.

25 MR. KLEIN: Okay. Thank you. I'd offer that



CROSS/DORSEY/DEFENSE

1 into evidence as Defense Exhibit C.

2 MR. BOGDANOS: Sure. No objection.

3 THE COURT: Defendant's C is received.

4 (Defense Exhibit C was received in evidence.)

5 BY MR. KLEIN:

6 Q. And then we you sent the lab -- well, you re-packaged  
7 the lamp, right?

8 A. I re-packed it in the same package I received it.

9 Q. All right. In the same condition which you received  
10 it?

11 A. Right.

12 MR. KLEIN: Okay.

13 MR. KLEIN: Mr. Bogdanos.

14 MR. BOGDANOS: Nothing.

15 THE COURT: Ms. Dorsey, thank you very much,  
16 ma'am.

17 MR. KLEIN: Judge, I think she has to leave  
18 the -- we can substitute one.

19 MR. BOGDANOS: Sure. I have an extra copy. I  
20 just wanted to make sure mine is good as Ms. Dorsey's.

21 MR. KLEIN: And mines as good as yours.

22 THE WITNESS: There are copies cop in my file  
23 you can have this. Is that all right, Judge?

24 THE COURT: That's fine. All right. That's  
25 it. Thank you.

CROSS/DORSEY/DEFENSE

1 (The witness was excused and exits the courtroom.)

2 (Continued on next page.)

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1 TK2 MR. BOGDANOS: People next call to the stand

2 Dt. Dimuro.

3 THE COURT: Thank you.

4 MR. BOGDANOS: Your Honor, with the Court's  
5 permission Ms. Pal will run the video.

6 THE COURT: Yes.

7 (Witness entered the courtroom.)

8 DT. G E R A R D D I M U R O , called as a witness by and on  
9 behalf of the People, having been first duly sworn  
10 and/or affirmed testified as follows:

11 THE WITNESS: I do.

12 THE COURT OFFICER: Have a seat please. Pull your  
13 chair up a little bit. If you could just state your name  
14 for the record, spell your last name; give your shield  
15 number and present assignment.

16 THE WITNESS: Detective Gerard, G-E-R-A-R-D,  
17 Dimuro, D-I-M-U-R-O; 2615, Manhattan North Homicide.

18 MR. BOGDANOS: May I inquire, your, Honor?

19 THE COURT: Yes you may.

20 DIRECT EXAMINATION

21 BY MR. BOGDANOS:

22 Q Good afternoon, detective -- I am sorry -- good  
23 morning, detective.

24 A Hey.

25 Q Detective, would you tell the jury how long you have

1 | been on the New York City Police Department altogether?

2 |     **A**     About twenty-nine (29) years.

3 |     **Q**     How long have you been a detective?

4 |     **A**     About twenty-five (25).

5 |     **Q**     And how long have you been at the Manhattan North  
6 | Homicide Squad?

7 |     **A**     About eleven (11).

8 |     **Q**     Does the Manhattan North Homicide Squad have a  
9 | particular area of responsibility in Manhattan?

10 |     **A**     59th street to the Riverside border -- Riverdale  
11 | border.

12 |     **Q**     And may we take it there is such a thing as a Manhattan  
13 | South Homicide Squad?

14 |     **A**     Yes, Manhattan is split in half.

15 |     **Q**     That's 59th down?

16 |     **A**     Right.

17 |     **Q**     Would you briefly tell the jury how you get an  
18 | assignment? It's obviously a homicide. How do you get to work  
19 | on an assignment?

20 |     **A**     Homicide occurs in the north. We are called out to the  
21 | scene and we assist the detective assigned in the precinct. We  
22 | have no case responsibility. We are actually assisting the  
23 | detective in that particular squad that catches the case.

24 |     **Q**     And so Manhattan itself is divided up into  
25 | precincts?

1       **A**    Yes, sir.

2       **Q**    And if I could invite your attention now to January  
3   13th of the year 2008, do you recall that Sunday generally?

4       **A**    Yes, I do.

5       **Q**    Were you on duty on that date?

6       **A**    Yes.

7       **Q**    And normal homicide duty?

8       **A**    Yes.

9       **Q**    And on that date did you receive an assignment of  
10   relevance to this case and this jury?

11      **A**    Yes, I did.

12      **Q**    Could you briefly tell the jury what that assignment  
13   was and how you received it?

14      **A**    We received an assignment about a homicide in the  
15   confines of the 25th Precinct in the Wagner houses. I believe I  
16   received the call from the 25 squad itself. We responded to the  
17   scene and began the investigation.

18      **Q**    And what you've just described, is that standard  
19   procedure?

20      **A**    Yes.

21      **Q**    And was there a detective -- because the Wagner houses  
22   are in -- within the geographical area of 25th Precinct, was  
23   there a detective from the 25th Precinct assigned to the  
24   case?

25      **A**    Yes, Ruben Henriquez.

1           Q     Would you spell Dt. Henriquez -- do you have it --  
2     detective, did you know Dt. Henriquez before January 13th?

3           A     Yes.

4           Q     You worked with him before?

5           A     Yes.

6           Q     So your specific assignment if we understand correctly  
7     is you will assist Dt. Henriquez in this homicide?

8           A     Yes.

9           Q     Do you remember approximately if you do what time you  
10    arrived at the Wagner houses?

11          A     Sometime in the evening.

12          Q     And where did you go?

13          A     I went to the 12th floor of the Wagner houses, 2400  
14    specifically I believe.

15          Q     2400 building?

16          A     Yes, I think I went directly to Apartment 12-E.

17          Q     And when you arrived, did you meet with anyone  
18    there?

19          A     Ruben, his partner, Detective Rivera. I think some  
20    patrol people were on the floor.

21          Q     And so we are clear, when you say patrol, you mean  
22    uniformed officers?

23          A     Yes, from the 25.

24          Q     And you say on the floor, on the 12th floor?

25          A     Yes.

1       **Q**    Do you recall whether when you arrived Crime Scene had  
2 already arrived?

3       **A**    No.

4       **Q**    Once you got there -- whenever you got there, you got  
5 there before Crime Scene?

6       **A**    Yes.

7       **Q**    Very generally and very briefly what's the first thing  
8 you did?

9       **A**    We entered the scene.

10       **Q**   Tell us what you did? By the scene you mean the  
11 apartment?

12       **A**    Yes, I went into the apartment. Went directly to the  
13 left rear bedroom and I observed the body. I believe that was  
14 the first thing I did after I greeted everybody in the hallway.

15       **Q**    And would you describe what you remember seeing when  
16 you went to the back rear left bedroom.

17       **A**    There was a bed. There were articles on the bed. The  
18 body was adjacent to the bed I believe face down. The pants had  
19 been pulled down and the bra and shirt had been pulled up.

20       **Q**    Do you remember anything on the bed catching your  
21 attention?

22       **A**    A wallet with numerous I.D.'s and a broom.

23               MR. BOGDANOS: Forgive me, Judge, if I could have  
24 one moment.

25       **Q**    When you went back and saw this, did you touch

1 anything?

2 A No.

3 MR. BOGDANOS: May I ask that the witness be  
4 handed 20, 23, 24 in Evidence. For the record photos of the  
5 body and then the bed.

6 (Handing.)

7 Q If you would please take a look at the three photos.  
8 Look up when you are done?

9 A Okay.

10 Q Do you recognize what's depicted in those photos?

11 A Yes, it's what we just talked about.

12 Q And are those photos fair and accurate photographs of  
13 the scene as it appeared when you arrived?

14 A Yes, sir.

15 Q Now, the jury has heard evidence that at some point the  
16 body was turned over by the medical legal investigator by the  
17 Office of the Chief Medical Examiner?

18 A Yes.

19 Q You were there before the body was turned over?

20 A Yes, I was.

21 Q And were you there when the body was turned over?

22 A Yes, I was.

23 Q You also mentioned a moment ago about seeing a broom on  
24 the bed?

25 A Yes.



1 Q You've seen that broom since then?

2 A Yes, I have.

3 Q Many times?

4 A Yes.

5 Q Can you see from where you are right now the broom?

6 A Yes, I can.

7 Q Do I need to bring it up. I can if you need to see it.

8 A No.

9 Q Do you recognize it?

10 A Yes, I do. That's the broom that was present at the  
11 crime scene.

12 MR. BOGDANOS: And for the record People's 25 in  
13 Evidence.

14 Q You recognize that?

15 A Yes, sir.

16 MR. BOGDANOS: I would now ask that the witness be  
17 handed People's 89 for Identification.

18 (Handing.)

19 Q Detective, you could take People's 89 -- for the record  
20 the wallet -- and go ahead if you would put a glove on please  
21 and once you have, take the wallet out of the bag just to make  
22 sure you are able to recognize it.

23 A That's it.

24 Q You have seen it before?

25 A Yes, I have.

1           **Q**    When you say that's it, can you be more precise?

2           **A**    That's the wallet that was present on the bed at the  
3 crime scene.

4           **Q**    Next to the wallet, what was there?

5           **A**    Various I.D.'s.

6           **Q**    And did there come a time -- without going into  
7 details -- did there come a time when you found out that one of  
8 the uniformed officers had actually touched these items with his  
9 bare hands?

10          **A**    Yes, I did.

11          **Q**    Don't share with us the reaction you had but --

12          **A**    Okay.

13          **Q**    -- but you knew that at the scene that some uniformed  
14 officer had touched everything -- these things with his bare  
15 hands?

16          **A**    I knew it very early on.

17          **Q**    But not the broom?

18          **A**    No.

19          **Q**    Just the wallet and I.D. cards?

20          **A**    Right.

21          **Q**    Had you been in that Wagner houses before January 13th?

22          **A**    Yes.

23          **Q**    Are you familiar with it's video surveillance system?

24          **A**    I am familiar with the Viper system, yes.

25          **Q**    Can you explain. The jury's had way more testimony

1 they could possibly want about it, but could you just very  
2 briefly describe it for us.

3 A It is a video system set up that covers various areas  
4 in the Wagner houses themselves and it's monitored by police  
5 officers and a supervisor.

6 Q And so your -- while your at the scene does Crime Scene  
7 then arrive?

8 A Yes, the ME investigator Crime Scene arrives.

9 Q Very briefly would you walk us through what, if  
10 anything, you did with the Crime Scene detective.

11 A I didn't -- I didn't engage in too much conversation.  
12 I mean they know what they are doing. I just observed as he  
13 processed the scene. We asked him to try and see if there was  
14 anything that might have been a weapon used. We just took note  
15 of what he collected, what he collected for DNA and print  
16 processing, and things of that nature.

17 Q And did you -- you observed him doing all these things?

18 A Yes, I did.

19 Q And did you observe him attempting to lift prints  
20 from -- throughout the apartment?

21 A Yes.

22 Q And did you observe him actually lift a print from the  
23 broom; that is, People's 25 in Evidence?

24 A Yes.

25 Q And by the ay, I am saying him and I am sorry -- that's

1 Dt. Hernandez of the crime scene?

2 A Yes, sir.

3 Q Had you met him before that day?

4 A I believe so.

5 Q So you're done -- at some point you are done in the  
6 apartment?

7 A Crime Scene is done. The body is removed, yes.

8 Q And do you begin the investigation?

9 A Yes.

10 Q Without going into any specifics, would you just give  
11 us a general idea of what the plan was at that point?

12 A The plan is you follow the basic textbook. We had no  
13 one in mind as to who might have committed this so you cast a  
14 large net. You do your canvasses.

15 Q What's a canvass?

16 A Canvass is to speak to people in the building. We  
17 speak to people coming in and out of the building; and an in  
18 this particular case the advantage we had there were Viper video  
19 so you immediately begin the process of viewing a lot of video.  
20 You confer with the Crime Scene people to see what they  
21 collected; and that's basically it in the very beginning.  
22 It's -- it's pretty much done on all cases.

23 Q And in this particular case you told us about the  
24 identification cards on the bed?

25 A Yes.

1           **Q**     Did that add anything to your investigation?

2           **A**     Well, we sought to identify and speak with the people  
3 whose identification cards we found.

4           **Q**     Now by seeking to speak with them, the people whose  
5 identification cards you found do -- when you look to speak to  
6 them -- before you have spoken to them, do you have anything in  
7 mind they are a suspect; they are a witness; anything at all?

8           **A**     No.

9           **Q**     What's -- what's the approach with these people?

10          **A**     The cards are there so you have to answer it out as a  
11 matter of course. Someone's card is found within a crime scene,  
12 so you want to speak to that person. Could it have absolutely  
13 no relevance? Of course, but you have to do to as a matter of  
14 procedure.

15          **Q**     And you did that in this case?

16          **A**     Yes, we tried.

17          **Q**     To the extent you could find the individuals?

18          **A**     Right.

19          **Q**     Now, same set of questions with regard to Viper video,  
20 2400 is a big building?

21          **A**     Yes.

22          **Q**     Sixteen floors?

23          **A**     Yes.

24          **Q**     And do you speak to every single person?

25          **A**     No.

1       **Q**     That you see on video?

2       **A**     No.

3       **Q**     Do you speak to as many people as you could identify?

4       **A**     Yes.

5       **Q**     Same set of questions, are they suspects? Are they  
6 witnesses? What are they?

7       **A**     No. To the extent that we took a particular block of  
8 video based on the time we thought that the incident occurred,  
9 we tried to identify as many people on the video as we could and  
10 speak to them. As with the I.D. cards.

11       **Q**     And is it the same approach before you speak to any of  
12 those people, are you -- in your mind are you saying must be a  
13 suspect, must be a witness?

14       **A**     We had no suspects at the outset of this case. What I  
15 am talking about, the very first few hours of the case.

16       **Q**     So you told us how you begin the investigation. Does  
17 that -- that strategy continue for a period of time?

18       **A**     Sure. You plot a long. There is no magic involved.  
19 You just plot along. You do the basics and as the evidence is  
20 gathered, you take the appropriate course and focus on certain  
21 individuals as the evidence comes in.

22       **Q**     Now moving now to the next day, January 14th. It's a  
23 Monday morning. Did you have occasion to go to the Office of  
24 the Chief Medical Examiner?

25       **A**     Yes.

1       **Q**     For what purpose?

2       **A**     To view the autopsy of Helen Abbott.

3       **Q**     Standard procedure?

4       **A**     Yes, it is required.

5       **Q**     So tell us what you did.

6       **A**     I met with Dr. Tranchita. I sat quietly on a stool and  
7 watched him perform the autopsy.

8       **Q**     And the -- just so we are clear, it's the same  
9 Helen Abbott that you saw in the crime scene on the thirteenth?

10      **A**     Yes, sir.

11      **Q**     And did you notice before he actually performed -- and  
12 I am not going to -- at least I am not going to ask you any  
13 questions about cutting open the body but before Mr. -- Dr.  
14 Tranchita actually did the autopsy, did you notice if he  
15 collected anything from the body of Helen Abbott?

16      **A**     He collected -- I know he conducted a rape kit. He  
17 took swabs of the breast after he made a physical inspection of  
18 the body.

19      **Q**     And did you actually observe him -- let's just limit  
20 this question now to the swabs you said of the breasts. Did you  
21 observe him take swabs of the breasts?

22      **A**     Yes, sir, I did.

23      **Q**     Starting with same -- different swab for each breast?

24      **A**     Yes.

25      **Q**     Do you remember how many swabs per breast?

1           **A**     No, I don't.

2           **Q**     When you saw him -- let's start with the left breast.  
3 Did you actually see him swab the left breast?

4           **A**     I saw him take the Q-tip and swab the breast, each  
5 breast.

6           **Q**     Can you tell us how he did that as best you recall.

7           **A**     As best as I recall I guess in a circular motion around  
8 the breast. Then he placed it in a container of some sort and  
9 packaged it and then went on to the autopsy.

10          **Q**     And just so we are clear when you saw him swab the  
11 breasts, did he swab --

12                   MR. KLEIN: Objection. Objection. He said how he  
13 swabbed. He can ask how he swabbed. He can't suggest an  
14 answer he wants.

15                   THE COURT: Overrule. Overruled. You may  
16 continue.

17          **Q**     When you saw him swab the breast, did you see him swab  
18 the breast and only the breast?

19          **A**     Yes.

20          **Q**     And that's what he swabbed? He swabbed -- he didn't  
21 swab, go to the shoulder or any part -- other part of the body  
22 or just the breast?

23          **A**     A swab of the breast is the breast.

24          **Q**     And only the breast?

25          **A**     And only the breast.



1 MR. KLEIN: Judge, those are leading questions,  
2 are they not? You tell me to object. You overruled the  
3 objection. I don't know what you want me to do. Did he  
4 make them or not?

5 THE COURT: All right, you registered your  
6 complaint. Let's continue.

7 MR. BOGDANOS: Thank you.

8 Q Now, let's go back to the investigation. You told us  
9 one of the things you did was view the Viper video?

10 A Yes, sir.

11 Q Was there -- did you have occasion to view Viper video  
12 from all the way back to the 11th of Jan -- January 11th, the  
13 Friday?

14 A Yes.

15 Q Was there anything that caught your attention on that  
16 video, on the January 11th video?

17 A As pertaining to particular individuals.

18 Q Yes?

19 A Yes.

20 Q Explain.

21 A There was an individual who I took note of that I later  
22 identified. Actually, there were a couple of individuals that I  
23 later identified that were present on the video that were of  
24 interest to me.

25 Q And do you remember any of the names of these

1 individuals?

2       **A**     One is in the courtroom, Richardson, and the other guy  
3 is a guy named Anthony Hall.

4       **Q**     Let me start with Mr. Richardson, do you know his full  
5 name?

6       **A**     Mark Richardson.

7       **Q**     What about Mark Richardson caught your attention on the  
8 video?

9       **A**     Nothing other than the fact that he's there. I didn't  
10 know what to make of him at that point. It's just that he is  
11 present.

12       **Q**     And you see him just once or more than once?

13       **A**     I saw him several times.

14       **Q**     And at this point same set of questions as with the  
15 identification cards, is he a suspect? Is he a witness? What  
16 is he at this point?

17       **A**     No. I didn't know what to make of him or Hall at this  
18 point. They are just guys that I know about that I want to  
19 speak to eventually.

20       **Q**     And you've indicated you see Mr. Richardson -- for the  
21 record, and I would ask that Mr. Richardson be asked to stand,  
22 please.

23                     (Defendant so complied with request.)

24                     THE COURT: Thank you.

25       **Q**     If you would please for the record indicate what

1 Mr. Richardson is wearing today.

2 A He is wearing a black sweat shirt and a -- black pants.

3 Q Thank you. You could take a seat.

4 Detective, looking at Mr. Richardson you have just seen  
5 him stand. Do you know his height and weight?

6 A I'd say 6'7" maybe.

7 Q Now comparing his weight now to when -- withdrawn. Did  
8 there come a time when you met Mr. Richardson back in 2008?

9 A Yes.

10 Q Comparing his weight now to his weight then, what can  
11 you say?

12 A I think he lost a little weight.

13 Q You want to give us a rough idea if you can?

14 A I'd say anywhere between 30 and 50 pounds.

15 Q So he's lighter now than he was then?

16 A Yes.

17 Q So -- you said that and let me go to -- you said,  
18 mentioned a second name so we will go to that now. The other  
19 individual that you saw on video that you are able to identify?

20 A Anthony Hall.

21 Q Do you ever see them together?

22 A Yes.

23 Q Do you learn --

24 THE COURT: I am sorry on the videotape?

25 MR. BOGDANOS: Thank you, Judge.

1 Q Do you see them together on the videotape?

2 A Yes, I do.

3 Q And do you learn where Anthony Hall lives?

4 A He lives on the floor below Helen in the same building.

5 Q So on the eleventh floor?

6 A Yeah.

7 Q Of 2400?

8 A Yes.

9 Q Do you learn where Mr. Richardson lives?

10 A Richardson lives in Astoria, Queens.

11 Q So does there come a time when you just indicated you  
12 are going to interview everyone possible that has any --

13 A Yes.

14 Q Connection at all?

15 A Yes.

16 Q Does there come a time when you find and interview  
17 Anthony Hall?

18 A Yes.

19 Q Does there come a time when you find and interview  
20 Mark Richardson?

21 A Yes.

22 Q And do you remember the date that you interview  
23 Mark Richardson?

24 A The date is February 5th of 2008.

25 Q And do you remember approximately how long that

1 interview took roughly?

2 A A couple of hours.

3 Q And at the end of the interview what do you do with  
4 Mr. Richardson?

5 A I took him home.

6 Q Drove him to Queens?

7 A Yeah, went back to Queens.

8 Q If I could now invite your attention to the next day.

9 A Okay.

10 Q February 6th?

11 A February 6.

12 Q February 6th of 2008. At this point in the  
13 investigation still doing what you've told us that is?

14 A Yes.

15 Q Interviewing everyone you can?

16 A Yes, we are still at that point.

17 Q This physical evidence that you talked about that you  
18 saw Crime Scene recover, do you have any results back yet?

19 A No.

20 Q And how does that work? How do you get results from  
21 the Office of the Chief Medical Examiner or the New York City  
22 Police Department Crime Lab?

23 A We are notified by the lab of results.

24 Q Whatever they are, DNA?

25 A Yes.

1 Q Fingerprints?

2 A Well, latent prints are One PP.

3 Q One PP is?

4 A Police Plaza.

5 Q Police headquarters?

6 A Yes, they notify us of print results; and the lab in  
7 Queens and ME's office notifies us of other results.

8 Q So while you are waiting for the lab results, if any,  
9 what are you doing?

10 A The investigation.

11 Q So now on February 6th, do you visit an individual of  
12 relevance to this case on that date?

13 A I believe I do.

14 Q Do you remember her name?

15 A I'm not sure of the name. I am not sure.

16 Q Well, what is her job title?

17 A Oh, okay, I know where you are going now. I do.

18 Ms. Graz -- I can't pronounce it right.

19 Q How about first name?

20 A No.

21 Q Have you seen her today?

22 A Yes.

23 Q Where is she right now?

24 A She is in back of us waiting to testify.

25 Q She is in the witness waiting room?

1       **A**     Yes. She works for the Parks Department.

2       **Q**     Would the name Erica Grazette sound right?

3       **A**     That sounds very right, yes.

4       **Q**     So you interview Ms. Grazette?

5       **A**     Yes.

6       **Q**     Why?

7       **A**     To verify a time, a portion of time that Richardson  
8     reportedly worked.

9       **Q**     And what time was that?

10      **A**     It was Friday the eleventh from 7:00 to 3:00 or 7:00 to  
11     3:30.

12      **Q**     Had Mr. Richardson told you that?

13      **A**     Yes.

14      **Q**     So what are you doing?

15      **A**     I am seeing if he is telling the truth or not. I want  
16     to verify.

17      **Q**     About what?

18      **A**     About that particular incident whether he worked or  
19     not.

20      **Q**     At the -- so you go to see Ms. Grazette and what, if  
21     anything, do you ask her?

22      **A**     We asked her to provide us with documentation as to  
23     whether or not Mark worked that day. She said she would and I  
24     think she eventually faxed it to us.

25      **Q**     Would that be the next day?

1       A     Yes.

2       Q     Now in addition to the physical evidence that you've  
3 described from the crime scene, so put that aside.

4       A     Okay.

5       Q     We know you are out there interviewing other witnesses.  
6 Put that aside. Did there come a time when you realized that a  
7 telephone might have some relevance in this case?

8       A     Yes.

9       Q     Explain how that came about?

10      A     Family of the deceased told us that Helen had a cell  
11 phone that they had given her.

12      Q     I am sorry by the family do you remember --

13      A     Cheryl.

14      Q     And she is?

15      A     The daughter.

16      Q     And did you look for a cell phone?

17      A     Yeah.

18      Q     Did you look --

19      A     No, there was no cell phone at the crime scene.

20      Q     So based on that, what did you do?

21      A     We asked for call detailing for the time and/or around  
22 the occurrence of death. I this evening. We asked for several  
23 days before and after the thirteenth when she was found; and  
24 subsequent for that after receiving the detailing, we found that  
25 there was activity on the phone that was of interest to us.



1           Q     So just so we are clear, you get -- when you say you  
2 asked for, you get subpoenas?

3           A     Right we do --

4           Q     District Attorney?

5           A     We go to the District Attorney.

6           Q     Detective, you've got to -- you've got to let me finish  
7 the question.

8           A     Sorry.

9           Q     Sorry. You are not the only one who does that to me  
10 but you've got to -- do you go to the District Attorney's Office  
11 to get subpoenas for phone companies?

12          A     Yes.

13          Q     And ultimately you get answers to the subpoenas?

14          A     Yes.

15          Q     In the form of what?

16          A     Call detailing records.

17          Q     Telephone records?

18          A     Right.

19          Q     And do you go through the telephone records of Ms. --

20          A     Yes.

21          Q     -- Ms. Abbott?

22                 Now I cut you off so forgive me. What is it you notice  
23 about Helen Abbott's telephone records that catches your  
24 attention and upon which you act?

25          A     Well, the first thing that catches my attention is that

1 it goes dead on the eleventh meaning there is no activity after  
2 Friday the eleventh. I think we found her on Sunday so there is  
3 a dead spot there; so we do as a matter of course is backtrack  
4 from the last call back.

5 Now I had a particular time in mind so I looked at some  
6 particular phone calls and --

7 Q And let me stop you for a moment.

8 A Go ahead.

9 Q What the -- what you just described is basically  
10 standard procedure?

11 A Yeah, nothing unusual.

12 Q And you've got a series of phone calls now?

13 A Yes.

14 Q And they are basically just the last set of phone  
15 calls; right?

16 A Right.

17 Q And what is the goal with regard to those phone calls?  
18 What do you want to do?

19 A To see who those people are that were called or made  
20 calls into that phone.

21 Q At that point in time do you have any idea whether  
22 those phone calls have any relevance at all?

23 A I was clueless.

24 Q So you just started calling them?

25 A Calls and visits.

1       **Q**     And in addition to that also more subpoenas for more  
2 telephone records for those telephones?

3       **A**     Yes, what happens -- yes, you get the number and the  
4 detailing. Then you have to apply for subscriber information  
5 to. See who that number is subscribed to by.

6       **Q**     Now did there -- we will fast forward. Did there come  
7 a time when you were able to contact -- and I am just going to  
8 limit you now to the last 22 phone calls on Helen Abbott's  
9 phone?

10      **A**     Okay.

11      **Q**     Right, just those last 22?

12      **A**     Okay.

13      **Q**     Did there come a time when you took steps to track down  
14 or speak to the subscriber or actual user of each of those  
15 telephones?

16      **A**     Yes.

17      **Q**     Generally -- we will get into specifics -- but  
18 generally how did you do that?

19      **A**     Once I got the subscriber information I visited the  
20 address of the residence of the subscriber.

21      **Q**     And did you do that phone number by phone number?

22      **A**     Yeah.

23      **Q**     And did you notice a pattern?

24      **A**     Yes.

25      **Q**     Which was?

1       **A**     These phone calls were related to people that  
2 Mark Richardson knew who were basically family members of his.

3       **Q**     Of Mark Richardson?

4       **A**     Yes.

5       **Q**     Okay.

6               MR. BOGDANOS: And for this I would ask if we  
7 could actually put it on the easel. Put your glasses on and  
8 may the detective come and approach, Judge?

9               THE COURT: Yes.

10              MR. BOGDANOS: Thank you.

11              THE WITNESS: I am getting up?

12              THE COURT: Yes.

13       **Q**     It is called by number, which is 12 in Evidence.  
14 Please take a look at this chart and please, detective, pick a  
15 side but be conscious don't block the chart.

16       **A**     Okay. I think maybe I be will go over here.

17       **Q**     Just pick a side and be where you could actually see.  
18 Have you seen this chart before?

19       **A**     Yes, I have.

20       **Q**     Have you seen more importantly the records that form  
21 the basis for the information on the chart?

22       **A**     Yes, I have.

23       **Q**     So you can see -- actually, I am sorry -- let me very  
24 quickly just do 11 in Evidence first.

25               MR. BOGDANOS: If you would just put that on the

1 front just for a few moments.

2 Q Okay, People's 11 in Evidence you see that this is a  
3 phone chart and you see that it's in chronological order if you  
4 look to the left two columns, date, and time. You see how they  
5 are --

6 A Yes.

7 Q -- in chronological order?

8 A Yes.

9 Q You have seen this chart before?

10 A Yes.

11 Q So we don't bounce back and forth, let's take eleven  
12 down and go to twelve?

13 A Take this down?

14 Q Yes. Now twelve is the same exact calls but now they  
15 are not divided by time anymore but they are divided by  
16 number?

17 THE WITNESS: Okay.

18 THE COURT: I am sorry, detective, just step back  
19 a little more. The jurors are having trouble.

20 Q Again you have seen both these charts before?

21 A Right.

22 Q Let's start with the first and it is no longer the  
23 first call but the first set of calls that's listed.

24 MR. BOGDANOS: May I approach?

25 THE COURT: Yes, you may.

1       **Q**    Is the first four all the same number?

2       **A**    Yes.

3       **Q**    That number I have to read it in the record  
4   (212) 319-6322. Do you recognize that number?

5       **A**    Yes, that's Mark's wife's work number.

6       **Q**    And have you -- without going into the -- you can't go  
7   into contents of conversation. It is hearsay. You had spoken  
8   to that person?

9       **A**    Yes.

10      **Q**    To her?

11      **A**    Yes.

12      **Q**    Going to the next this information here in user, that's  
13   correct?

14      **A**    Yes.

15      **Q**    And now go to the next set of numbers. It's --

16                   (Whereupon, cell phone began to ring at a high  
17   ring tone.)

18      **Q**    It better not be you.

19      **A**    No, it's not me.

20                   THE COURT OFFICER: It's being taken care of.

21      **Q**    The next let me read into the record --

22      **A**    It's me.

23                   (Witness commenced to silence cell phone.)

24      **Q**    (212) 862-8222. Do you know that number?

25      **A**    Yes, that's Ms. Tracy Brathwaite's number. That's

1 Mark's sister -- stepsister.

2 Q Go to the next number (347) 730-6746. Do you know that  
3 number?

4 A That's Mark's home number.

5 Q In Queens?

6 A Yes, in Astoria.

7 Q Next number (347) 860-6703, do you know that number?

8 A That's Mark Richardson's wife's cell phone number.

9 Q 347 -- we will come back to that in a moment.

10 Next number skipping (646) 283-0883, do you recognize  
11 that number?

12 A That's Mark's brother Derek.

13 Q And (718) 547-3201, do you recognize that number?

14 A That's the number that eventually comes back to  
15 Marekha Richardson, Mark's daughter.

16 MR. BOGDANOS: That's M-A-R-E-K-H-A. Am I right?  
17 I think.

18 A Okay.

19 Q So the subscriber is Sabrina Bond?

20 A Right.

21 Q Do you go to that actual location?

22 A And meet the daughter, yes.

23 Q Of Mark Richardson?

24 A Yes.

25 Q That's at a separate location from the Queens address

1 that you were talking about earlier?

2 A Yes.

3 Q And then two more numbers (718) 822-1573, do you know  
4 that number?

5 A That's Mark's parents number.

6 Q And (973) 248-6257, do you know that number?

7 A That's Mark's sister in New Jersey.

8 Q Now, I ask you to skip a number so now let's go back to  
9 that number, the (347) 992-7267.

10 A Ah-huh.

11 Q Did you attempt to track down that number?

12 A I tried to track it down without success.

13 Q Did you actually get subscriber information and an  
14 address pursuant to subpoena for that telephone number?

15 A I did and it was a bogus address in the Bronx.

16 Q Bogus meaning the address?

17 A Not good.

18 Q That's didn't exist?

19 A Right.

20 Q Were you ever able to find out who -- if in fact a  
21 Juan Pello Perez even exists?

22 A I wasn't able to find that out.

23 MR. BOGDANOS: Thank you. I have nothing further  
24 on the chart. Detective you can --

25 THE WITNESS: Let me make sure this is off for



1 good.

2 MR. BOGDANOS: You could retake your seat.

3 THE COURT: This way. Come around this way.

4 (Witness resumed the witness stand.)

5 Q Now if I could invite your attention to July 10th of  
6 the year 2008?

7 A Okay.

8 Q Did there come a time when you placed Mr. -- or  
9 Mr. Richardson was placed under arrest on that date?

10 A Yes.

11 Q And after he was placed under arrest, where was he  
12 taken? To what precinct?

13 A The 25th Precinct.

14 Q Standard procedure?

15 A Standard procedure.

16 Q And after he was at the 25th Precinct, did you notify  
17 or was an assistant district attorney notified to come up to the  
18 precinct?

19 A Yes, ADA O'Connell.

20 Q Do you remember her full name?

21 A What's her full name? Kerry.

22 Q K-E-R-R-Y?

23 A Yes.

24 Q Kerry O'Connell?

25 A Yes.

1       **Q**   And she was the assistant district attorney on call for  
2 that day?

3       **A**   Yes.

4       **Q**   And did -- were you present when Assistant District  
5 Attorney O'Connell --

6       **A**   I am sorry she wasn't on call that day. She was  
7 assigned this case.

8       **Q**   Got you.

9            Okay, but it was her case to catch if you will and she  
10 came to the precinct?

11       **A**   Yes.

12       **Q**   Thank you very much, detective.

13            And did there come a time when you were present during  
14 an interview between Ms. O'Connell and Mark Richardson?

15       **A**   Yes.

16       **Q**   Was that interview between the assistant district  
17 attorney and Mr. Richardson videotaped?

18       **A**   Yes.

19       **Q**   Standard procedure?

20       **A**   Yes.

21            MR. BOGDANOS: I would ask that People's 42 in  
22 Evidence -- withdrawn.

23       **Q**   Before I do that, prior to Ms. O'Connell taking that  
24 interview of Mr. Richardson, you had been present with  
25 Mr. Richardson after his arrest?

1           **A**     Yes.

2           **Q**     At any point between the arrest and when Ms. O'Connell  
3 took this statement, did you make any promises or inducements to  
4 Mr. Richardson in order to get him to speak to Ms. O'Connell?

5           **A**     Absolutely not.

6           **Q**     Did you threaten or did anyone ever do so in your  
7 presence?

8           **A**     No.

9           **Q**     Did you threaten or coerce him in any, way, shape or  
10 form in getting him to speak to the district attorney on video?

11          **A**     No.

12          **Q**     Did anyone ever do so in your presence?

13          **A**     No.

14          **Q**     During the period of time that he was at the 25th  
15 Precinct before Ms. O'Connell arrived, was he offered food,  
16 something to drink?

17          **A**     Yes.

18          **Q**     And Mr. Richardson smoked cigarettes?

19                   MR. KLEIN: Judge, I am sorry to interrupt, just  
20 to be clear I have an objection to this entire line of  
21 questioning. I think we should address it.

22                   THE COURT: Overruled.

23                   MR. KLEIN: After the interaction.

24                   THE COURT: You may proceed.

25                   MR. BOGDANOS: I don't know what the objection is.

1 Q Mr. Richardson smokes cigarettes?

2 A Yes.

3 Q Was he able to smoke cigarettes --

4 A Yes.

5 Q -- in that time period.

6 And then there came a time when you were present. You  
7 stayed for Ms. O'Connell's statement?

8 A Yes.

9 Q Were you physically present in the room?

10 A Yes.

11 Q Can you describe that room for us?

12 A It's an interview room. I guess it's as big as from  
13 here to the end of the Judge's area. Not very wide. It is a  
14 standard interview room in the squad. There are two of them in  
15 the 25 Squad.

16 MR. BOGDANOS: Is that eighteen (18) feet? Does  
17 that sound fair.

18 THE COURT: I would say fifteen (15) to eighteen.

19 Q And describe the lighting?

20 A Normal.

21 Q And this particular room, what is it used for in the  
22 25th Squad?

23 A Interviews.

24 Q Any other purpose?

25 A Lineups.

1           **Q**    It has a one-way mirror?

2           **A**    Yes.

3           **Q**    And you mentioned that you knew it was being recorded  
4 at that time?

5           **A**    Yes.

6           **Q**    Is the camera actually in the room you are in?

7           **A**    No, it's in a room adjacent to the room that I was in.

8           **Q**    So you said that this room is used for lineups.

9 Describe this room. Who is in this room?

10          **A**    The defendant, the DA, and myself are in one room; and  
11 the video man is in the room adjacent by himself.

12          **Q**    If this was a lineup the video man would be where the  
13 people are looking in at the lineup?

14          **A**    Yes.

15          **Q**    Right?

16          **A**    Yes.

17          **Q**    You were in the actual lineup room?

18          **A**    Yes.

19          **Q**    Every precinct has one of these?

20          **A**    Yes.

21                   MR. BOGDANOS: Now, I would ask that People's 42  
22 be played for the detective and jury.

23          **Q**    And, detective, I am going to ask you to take a look at  
24 People's 42 in evidence quietly and at the end I am going to ask  
25 you if this is a fair and accurate recording of the -- of this

1 conversation.

2 (Videotape commenced playing.)

3 MR. BOGDANOS: Go back to the beginning. Let's  
4 expand it. Pause it.

5 (Videotape stopped playing.)

6 **Q** Detective, take a look at this?

7 **A** Yes.

8 (Videotape commenced playing.)

9 (Transcript continue on the next page.)

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DIRECT/DET.DIMURO/PEOPLE

1 T-3 - Peo. V Mark Richardson, Ind.#3534/08

2 September 21, 2011:

3 (Video being played in open court.)

4 (Video taped turned off.)

5 BY MR. BOGDANOS:

6 Q. Detective, from where you were seated, could you see  
7 that entire videotape statement that was just played?

8 A. Yes.

9 Q. And is that a fair and accurate recording of the  
10 conversation?

11 A. Yes.

12 Q. Just a couple of questions about that. At the very  
13 beginning Mr. Richardson indicates either the 10th or the  
14 11th. Do you remember when he talked about the date?

15 A. Yes.

16 Q. That's Thursday the 10th into Friday the 11th?

17 A. Yes.

18 Q. And he also talked about having seen you before and  
19 voluntarily spoken to you, is that the February 5th that we  
20 were talking about before?

21 A. Yes.

22 Q. And that's when you just brought him back home?

23 A. Yes.

24 Q. All right. And then, finally, on that video he had  
25 indicated that earlier that day he'd been arrested at the Parks

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1 Department legal counsel office?

2 A. The Department of Investigation.

3 Q. And did you chose that or did the Parks Department  
4 chose that location?

5 A. The Parks Department.

6 Q. And you were happy to comply?

7 A. Yes.

8 Q. And then you took him to the 25th?

9 A. Yes.

10 Q. All right. Now, you mentioned, and just so we're  
11 clear, in that video -- I'm sorry -- I guess there is one more  
12 question -- in that video you are seated to Ms. O'Connell's  
13 right, you are not on camera but --

14 A. Correct.

15 Q. So when Mr. Richardson points to his left he's  
16 pointing to you?

17 A. Yes.

18 Q. Okay. Now, with regard to the Viper video, you told  
19 us that the video was one of the things that had initially  
20 alerted you to Mr. Richardson at all?

21 A. Yes.

22 Q. If we could go to -- I am going to ask you to take a  
23 look at a series of clips.

24 MR. BOGDANOS: I'm sorry. Let me get the time  
25 line run to the jury. It's the smaller version of 74 A and B.

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1 THE COURT: This is the one that was handed out  
2 previously?

3 MR. BOGDANOS: Yes, Judge, it is.

4 It's just the one not the smaller one.

5 BY MR. BOGDANOS:

6 Q. And if we could start, Detective, with -- it will  
7 be -- actually, perhaps he could have one too.

8 MR. BOGDANOS: Clip number one. Set it up.

9 I am handing the detective a copy.

10 MR. KLEIN: Judge, I object to the, going  
11 through the clips, and I believe what's coming next, for  
12 reasons that we had discussed before the examination began.

13 THE COURT: You may continue.

14 MR. BOGDANOS: Go to clip, it's Clip Number 1,  
15 the 12:47 a.m. clip. Go ahead. Open it up.

16 (Viper clip being played in open court.)

17 BY MR. BOGDANOS:

18 Q. Just watch it. This particular individual with the  
19 umbrella and the B Hat, do you know him?

20 A. No.

21 Q. Every learn his name?

22 A. No.

23 Q. Do you remember that during Mr. Richardson's  
24 statement he had indicated that Anthony Hall had greeted him  
25 downstairs and said: See you up at Ma Ma's in a minute.

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1 Right, remember that portion?

2 A. Yes, I do.

3 Q. Ma Ma is?

4 A. Helen Abbott.

5 Q. Do you actually know if this is the person Mr.  
6 Richardson is talking about?

7 A. No, I don't.

8 (Video clip played in open court.)

9 BY MR. BOGDANOS:

10 Q. Do you see those two individuals that have just come  
11 into the frame?

12 A. Yes.

13 Q. And indicate who they are, please?

14 A. The guy in the green army jacket is Richardson. And  
15 the guy in front of him with the brown wool hat is Anthony  
16 Hall.

17 Q. And the individual in the foreground?

18 A. Don't know who he is.

19 Q. Did you ever learn who he is?

20 A. No, we were never able to identify him.

21 MR. BOGDANOS: Then we'll go to Clip 2. Just so  
22 Your Honor knows, there's light at the end of the tunnel,  
23 there's total of, maybe nine minutes in total.

24 Go to clip Number 2. Okay, 3. Thank you.

25 (Video clip being played in open court.)

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1 BY MR. BOGDANOS:

2 Q. Detective, you obviously seen this before?

3 A. Yes.

4 Q. It's from looking out?

5 A. Yes.

6 Q. Who are those two people hugging that you can see  
7 better on this side?

8 A. One's Hall. I don't know who the other guy is.

9 Q. That's the man with the umbrella?

10 A. Right.

11 Q. Before Mr. Richardson -- before that conversation we  
12 just spoke about, had you shown Mr. Richardson this video?

13 A. No.

14 Q. Tell us who that is?

15 A. Hall. Then Richardson. I don't know who that guy  
16 is.

17 MR. BOGDANOS: Okay. If we can go to Clip  
18 Number 4, please. And now if we can go to clip number five,  
19 please, inside the elevator.

20 (Video clip being played in open court.)

21 Q. As you get off the elevator on 12 which way do you  
22 turn to get to Ms. Abbott's apartment?

23 A. To the right.

24 MR. BOGDANOS: Okay. Let's go to Clip Number  
25 46, please.

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1 (Video Clip being played in open court.)

2 MR. BOGDANOS: You can go to clip 49 the  
3 elevator.

4 (Video clip being played in open court.)

5 MR. BOGDANOS: Pause.

6 Q. Okay. This the clip, you just watched Clip Number 49  
7 at approximately 2:15 p.m., who was that?

8 A. Richardson.

9 Q. And got off what floor?

10 A. Twelve.

11 Q. Now, that's at 2:15?

12 A. Yes.

13 Q. Now, look at the next series of entries on the time  
14 line from 2:58, those series of calls. Are these the calls you  
15 just described to us?

16 A. Yes, sir.

17 Q. So the series of calls that you described to us  
18 earlier which are 74 -- could we put it up on the easel --  
19 which are 74B, the series of calls from Helen Abbott's phone to  
20 Mark Richardson's family members, 19 times they call, takes  
21 place after Mark Richardson gets out at the 12th floor of that  
22 building?

23 A. Yes.

24 Q. And who lives on the 12th floor again?

25 A. Helen Abbott.

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1 MR. BOGDANOS: Okay. Put that down now but hold  
2 it I will need it in a minute. Let go to Clip 71, please.  
3 Elevator B.

4 (Video clip being played in open court.)

5 Q. And that is --?

6 A. Richardson.

7 Q. This is at 4:49 according to the video?

8 A. Yes.

9 Q. So, from 2:15 -- please just continue watching -- but  
10 from 2:15 to 4:49, while those calls you just testified to are  
11 being made, Mr. Richardson is in the building?

12 A. That's correct.

13 MR. BOGDANOS: Pause that for a moment.

14 Q. By the way, this is January 13, 2008?

15 A. No.

16 Q. I'm sorry. Thank you.

17 A. January 11th.

18 Q. January 11th of 2008. Was it unseasonably warm on  
19 January 11, 2008, I am talking about outside?

20 A. I don't recall if it was or not. Maybe it was a  
21 little warmer than usual.

22 MR. BOGDANOS: Hit play.

23 (Video clip being played.)

24 MR. KLEIN: Judge, I hope he's not going to ask  
25 the witness to describe -- to ask what he sees in the video,

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1 right.

2 MR. BOGDANOS: Could you back it up, please. If  
3 he's asking if I am going to ask him to describe to the jury --  
4 the jury can see what they can see. Hit play.

5 (Video clip being played in open court.)

6 MR. BOGDANOS: Now if we can go to 73.

7 BY MR. BOGDANOS:

8 Q. And while we're pulling that up, Detective, do you  
9 recall during the conversation that Ms. O'Connell had with Mr.  
10 Richardson, he indicated that immediately after he saw Anthony  
11 Hall stab Ms. Abbott with something he left and saw uniforms,  
12 blue coats?

13 A. Yeah. He described them as blue coats entering the  
14 building.

15 Q. Uniformed police officers?

16 A. Yes, sir.

17 MR. BOGDANOS: Hit play. Thank you.

18 (Video clip being played in open court.)

19 MR. BOGDANOS: Pause.

20 Q. That person in the left, left foreground, that is --?

21 A. A police officer.

22 MR. BOGDANOS: Hit play.

23 Q. And the person entering there right now?

24 A. Lieutenant.

25 Q. A Lieutenant, New York City Police Department?

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1 A. Yes.

2 MR. BOGDANOS: Okay. Now back up, if you would,  
3 and play that again.

4 (Video clip being played again.)

5 Q. You watched this video before, the front door video?

6 A. Yes.

7 Q. All these hours?

8 A. Yes.

9 Q. Is there any other time where you see Mr. Richardson  
10 bumping into, if you will, or exiting, the same time uniformed  
11 police --

12 MR. BOGDANOS: Pause. Back up.

13 Q. Sorry. Is there any other time that you saw Mark  
14 Richardson exit as uniformed blue coats were coming in?

15 A. No.

16 Q. This is it?

17 A. This is it.

18 Q. At 4:50 in the afternoon of January 11th?

19 A. Right.

20 MR. BOGDANOS: Okay. Hit my.

21 (Video clip continues to play.)

22 MR. BOGDANOS: Back up again, please, and hit  
23 play.

24 (Video clip being played.)

25 Q. Can you see his right hand from where you are?

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1 A. Yes.

2 Q. The bag?

3 A. Yes.

4 MR. BOGDANOS: Nothing further. Thank you,  
5 Detective.

6 THE COURT: We should take a break now?

7 Ladies and gentlemen, time for a short recess. I am  
8 going to ask all of you to wait outside. Please leave those  
9 papers on your chairs and we'll pick them up. Please do not  
10 discuss the case.

11 (The jury is excused for a break and exits the  
12 courtroom.)

13 MR. KLEIN: Can I make the record and then we'll  
14 take the break?

15 THE COURT: Yes, Mr. Klein. Go ahead.

16 MR. KLEIN: Judge, I am asking for a mistrial at  
17 this time, based on what I saw as a misuse and a prejudicial  
18 use of the pretrial ruling by Judge Carruthers on this matter.

19 First of all, as the Court knows, there's been no  
20 attempt, by myself, to litigate the voluntariness of the  
21 statement. And we have all agreed that the February 5th  
22 statement isn't coming in. Which would really give me my  
23 ground to try to argue it.

24 But the district attorney and the Court knows, from  
25 reading the ruling, that in fact Judge Carruthers ruled that

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## PROCEEDINGS/ARGUMENT

1 the police officers, including Detective Dimuro, had acted  
2 inappropriately with the defendant. They had questioned him  
3 without rights. They had made statements to him without  
4 rights. Then the defendant then made a statement which was  
5 suppressed.

6 The defendant also invoked his right to counsel and  
7 they had taken him into the bathroom and they induced him to  
8 speak again and then he agreed to speak and another statement  
9 was taken and that statement was suppressed because that was  
10 considered unconstitutional and inappropriate behavior by the  
11 police officers. So that whole thing is out of the case.

12 Now, I don't believe it's then appropriate for the  
13 district attorney to say in that period were inducements given  
14 for the defendant to speak because, in fact, inducements were  
15 given for him to speak.

16 Inducement being basically the functional equivalent  
17 of interrogation before rights. Inducement such as: We know  
18 we got you. Or, you know, we got your DNA on the breast.  
19 You're on the video. This is evidence against you. These are  
20 all inducements to make someone speak.

21 In fact, Justice Carruthers' ruling is really  
22 precisely that, that inducements were given. Once that's taken  
23 out of the case the District Attorney's Office can't use that  
24 ruling then in a sense as sword against the defendant and say  
25 we're not going into that but let's talk about what didn't

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1 occur in there, which is the same thing as talking about what  
2 did occur in there.

3 Because he says, for example, did you give any  
4 inducements to the defendant to speak? And the fact is it was  
5 found by another Judge inducements were given.

6 I mean, I have to say, I was astounded to hear that  
7 and I did object and I said I was objecting to this whole line  
8 of questions. The court over turned my objection but I don't  
9 know how that can be cured now.

10 I am not going to open the door now to answer it, to  
11 say, let's talk about what the inducements were, right? How  
12 can I do that? Obviously I am not going to do that.

13 I think it was a violation of the ruling. Violation  
14 of the defendant's Fifth Amendment rights and New York and  
15 Federal Constitution. I think it was inappropriate action by a  
16 prosecutor in this case and I think that there should be a  
17 mistrial.

18 MR. BOGDANOS: Uncharacteristically for Mr.  
19 Klein he's misstating Justice Carruthers ruling. There are two  
20 separate rulings that always takes place in any statement.

21 Due process and procedural voluntariness and factual  
22 voluntariness. Justice Carruthers found that the violation was  
23 the not giving Miranda. Period. End of story. He found the  
24 statements to be factually voluntary.

25 So, for Mr. Klein to sit up here and say the Court

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1 found inducement, is actually factually inaccurate. The Court  
2 found prior to questioning, or the functional equivalent of  
3 questioning under Farrow, the detectives should have given  
4 Miranda. They did not. Therefore, those statements are  
5 suppressed.

6 The proof, beside Justice Carruthers own words, is  
7 that he allowed the subsequent statement to ADA O'Connell to  
8 come in and he allowed the subsequent statement after the Q&A,  
9 after the videotaped Q&A, to Detective Henriquez, to come in  
10 because there was no factual involuntariness.

11 So, that's just wrong on the record, it's wrong on  
12 the facts. Now, the people introduced the Q&A, the Court is  
13 going to instruct the jury that they may only consider that  
14 statement if they find that statement to have been voluntary.

15 The defense gets two bites at the apple. It is what  
16 it is. The burden is on the People to prove the voluntariness  
17 of the portion of the statement that Justice Carruthers  
18 admitted, regardless of his finding, that it was voluntary to  
19 do it again.

20 And so, I asked Detective Dimuro, factually accurate  
21 questions: Did you make any promises or inducements or did  
22 anyone do so in your presence? The factually true -- I don't  
23 want to offend Mr. Klein -- the fact of record is that he did  
24 not. That's what he testified to the at the hearing and that's  
25 the finding of Justice Carruthers at the hearing as to

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1 Detective Dimuro.

2           So I don't under -- when I said I don't understand  
3 the objection, when Mr. Klein made the objection, I didn't  
4 understand. I had no idea what he was talking about when he  
5 had objected to my asking: Did you threaten him and any way,  
6 shape or form? If anyone do so in your presence? Did you make  
7 any promises or inducements? Did anyone do so in your  
8 presence?

9           He did not. That's it. I have to prove that. And  
10 the fact that a prior statement has been suppressed for a  
11 Miranda violation doesn't absolve me of the responsibility of  
12 proving, or prevent me from proving the factual voluntariness  
13 of the subsequent statement. And that's what I did in this  
14 case, correctly, legally, appropriately, in this case for this  
15 jury.

16           MR. KLEIN: Well, Judge, if you rule against me  
17 and should there be a conviction an appellate court will rule  
18 on the issue. But I stand by what I said. I was surprised and  
19 I think it was very egregious error in this case.

20           I understand he has a burden to show the  
21 voluntariness of this statement, the ruling is what the ruling  
22 was: Don't go into that area. You can't then use it as a  
23 sword against the defendant.

24           THE COURT: Thank you both. The motion is  
25 denied.

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1 MR. KLEIN: Can I take a break?

2 THE COURT: Yes. Mr. Richardson you want a  
3 break this is the time.

4 (Short break taken.)

5 THE COURT: Case on trial continued. The jury,  
6 please.

7 (The jury enters the courtroom.)

8 THE COURT CLERK: Case on trial continued. The  
9 People of the State of New York against the defendant Mark  
10 Richardson. The defendant, his attorneys, and the assistant  
11 district attorney are present. Will both sides stipulate all  
12 jurors are present and properly seated.

13 MR. BOGDANOS: Yes.

14 MR. KLEIN: Yes.

15 THE COURT: Thank you. May we have the witness,  
16 please, Detective Dimuro.

17 (The witness, Detective Dimuro, resumes the witness  
18 stand.)

19 THE COURT: Detective, you are still under  
20 oath.

21 THE WITNESS: Okay.

22 CROSS EXAMINATION

23 BY MR. KLEIN:

24 Q. Good afternoon, Detective.

25 A. Hi.

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CROSS/DET.DIMURO/DEFENSE

1 Q. Detective Dimuro, I believe you said on direct  
2 examination that you examined a large amount of video footage  
3 from the Viper Department, is that true?

4 A. True.

5 Q. And it would be accurate to say that when you watched  
6 VIPER video you took notes on the sections that you were  
7 watching, right?

8 A. Yes.

9 Q. And Detective Henriquez -- he's in the back room,  
10 right?

11 A. Yes.

12 Q. He also watched a lot of the VIPER video, right?

13 A. Correct.

14 Q. And just with your notes would it be accurate to say  
15 that you have notes that reflect watching it, watching the  
16 video from January 11th, right?

17 A. Yes.

18 Q. And some on January 12th, right?

19 A. Yes.

20 Q. And maybe even some on January 13th?

21 A. Yes.

22 Q. You have none on January 10th, right?

23 A. No video was watched on the 10th.

24 Q. That was the question I was going to ask. It would  
25 be accurate to say that neither you nor Detective Henriquez

CROSS/DET.DIMURO/DEFENSE

1 watched any video from January 10th of 2400?

2 A. That would be correct.

3 Q. Okay. Now, you had realized that you saw individuals  
4 that turned out to be Mark Richardson, Anthony Hall, and  
5 others, at about one in the morning of January 11th, right?

6 A. Correct.

7 Q. Okay. And then you saw Helen Abbott still alive  
8 after that, right?

9 A. Around three something.

10 Q. And then you never see her alive again, right?

11 A. Correct. I don't see her on the video.

12 Q. You see her come back home?

13 A. Right.

14 Q. But then that's it?

15 A. That's it.

16 Q. And then it seems like, a likely time of death, and  
17 without trying to pin you down to any specific time, it appears  
18 very plausible, that she dies sometime in the afternoon of the  
19 11th?

20 A. That's what I believe.

21 Q. Okay. So there was a certain logic that you used to  
22 focus on the 11th and forward in terms of video watching?

23 A. Yes. From the 11th until the time the body is  
24 found.

25 Q. Okay. But it would be accurate to say that you did

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1 receive information concerning the life-style of Ms. Abbott,  
2 yes?

3 A. Yes.

4 Q. Okay. And the information that you received included  
5 that, in your words, I believe, she was extremely proactive in  
6 her crack smoking, right?

7 A. Correct.

8 Q. And that her apartment, I believe these are your  
9 words, was really active 24/7, is that right?

10 A. Right.

11 Q. And then, your words I believe, that to support her  
12 habit she allowed countless number of people to use her  
13 apartment for drug use, right?

14 A. Right.

15 Q. And for drug sale, right?

16 A. Right.

17 Q. And for sex, yes?

18 A. Correct.

19 Q. And for sleeping, right?

20 A. Correct.

21 Q. That she even had am flat rate that she charged  
22 people to use it, is that true?

23 A. Ten dollars.

24 Q. For anything they wanted to use the apartment for,  
25 right?



CROSS/DET.DIMURO/DEFENSE

1 A. Correct.

2 Q. Now, we just watched some video clips here, right?

3 A. Right.

4 Q. And we also watched a statement that Mr. Richardson  
5 made, yes?

6 A. Yes.

7 Q. I just wanted to talk about the clips that we watched  
8 for a moment, okay?

9 A. Okay.

10 Q. One clip was approximately 12 -- was about one in the  
11 morning on the 11th, right?

12 A. Right.

13 Q. And in that clip you could see four people who get  
14 off at the 12th floor, is that right?

15 A. Correct.

16 Q. Okay. Now, in the statement that we watched, right,  
17 you just watched it, yes?

18 A. Yes.

19 Q. Okay. Mr. Richardson described, in his statement, an  
20 independent which he says he and Hall got off on the 11th  
21 floor, yes?

22 A. Yes.

23 Q. Okay. And shown the video clips that we watched, be  
24 accurate to say that you saw Richardson and Hall arrive and  
25 another person and Hall greet someone outside before they come

CROSS/DET.DIMURO/DEFENSE

1 in, right?

2 A. Correct.

3 Q. And would it be accurate to say that in the statement  
4 that Mr. Richardson makes, he says before that occurred this  
5 other guy, I don't know him but I guess they heard of this guy,  
6 was on the elevator, he told him we was coming up to his house.  
7 Yes?

8 A. I remember that.

9 Q. Now, you indicated that you did it large amount of  
10 work on phone records, right?

11 A. Correct.

12 Q. Because you thought that the phone records could give  
13 you important leads and eventually evidence in the matter, yes?

14 A. Yes.

15 Q. Okay. And you found various numbers, yes?

16 A. Yes.

17 Q. And many of them, as matter of fact, almost all of  
18 them in the afternoon of the 11th you were able to tie to Mark  
19 Richardson, right?

20 A. Yes.

21 Q. But it's also accurate to say that there was one  
22 number and, for lack of a better word, I will call a peculiar  
23 number, is that a fair word to use?

24 A. Are we talking about the number that I couldn't  
25 identify that was on the chart?

CROSS/DET.DIMURO/DEFENSE

1 Q. I'm sorry. It was a bad question, Detective. I will  
2 call it 347-992?

3 A. Yes.

4 Q. 347-992 was a call that you saw had been made at  
5 about 3:24 in the afternoon, right?

6 A. Yes.

7 Q. And be accurate to say that -- I'm sorry, this chart,  
8 People's 11, this chart begins at 3:02 in the afternoon, yes?

9 A. Yes.

10 Q. Thank you. And it has a call that obviously goes to  
11 Derek Richardson, right, relative of the defendant?

12 A. Correct.

13 Q. It's accurate to say that in your investigation you  
14 actually found one of these 347-992 numbers just really four  
15 minutes before that first call on there, right?

16 A. Okay. I am beginning to get a little confused. Does  
17 that number appear on the chart that we're talking about?

18 Q. It's not on this chart. Okay? It's not on this  
19 one. Okay? And I am not saying that it is on that one.

20 A. Okay.

21 Q. I am saying that, would it be true in your review of  
22 the phone records, you also saw that there had been this call  
23 to this individual, who you weren't able to identify, at 2:58  
24 in the afternoon, that that was another call to the 347-992  
25 number?

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1 A. Correct.

2 Q. Okay. And it also be accurate to say and, I believe  
3 you said this on direct, that when you got Ms. Abbott's phone  
4 record you actually you went back a few days, right?

5 A. I worked back from the last call and I received  
6 information for two days worth of maybe even more.

7 Q. So you actually had calls for the 10th, right?

8 A. Yes, I did.

9 Q. And it would be accurate to say that in yours review  
10 of the calls on the 10th you saw this number 347-992, and  
11 whatever it is, called many, many times?

12 A. That number was very prevalent in the call  
13 detailing.

14 Q. Okay. And that's part of the reason you then made an  
15 effort to try to track it down, right?

16 A. Yes.

17 Q. And the best you could do was find out that it came  
18 up to a bogus address or whatever?

19 A. Yes.

20 Q. Okay. Now, with regard to the watching of the  
21 videotape, you have indicated that you saw Anthony Hall on the  
22 videotape, right?

23 A. That's correct.

24 Q. And you saw him about 1 a.m. in the morning of the  
25 11th, right?

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1 A. Yes.

2 Q. And it also be accurate to say, that you then watched  
3 the video to see when it is that Hall comes out? I am not  
4 saying that's your purpose but you do note when Hall comes out?

5 A. He does come out.

6 Q. Actually the next time that you see him or the first  
7 time that you see him come out after that, right, is at about  
8 5 o'clock in the afternoon of the 12th, right?

9 A. Okay. So what you're saying is from the time I see  
10 him initially at 1 the next time I see him is the 12th?

11 Q. I am not trying to say anything. Just tell us. When  
12 is the next time that you recall seeing Hall after you see him  
13 go in at about 1 a.m. on the 11th? And if you have your  
14 notes -- I don't know if you have your notes here.

15 A. No.

16 MR. BOGDANOS: I can give --

17 MR. KLEIN: Hold on.

18 (Pause)

19 BY MR. KLEIN:

20 Q. Detective, one of the things you and Henriquez did in  
21 reviewing notes -- in reviewing video, you made a bunch of  
22 notes?

23 A. Correct.

24 Q. Some of them you actually you wrote on the same pages  
25 with him, he wrote down what he was viewing, you wrote down

CROSS/DET.DIMURO/DEFENSE

1 what you were viewing?

2 A. Yes.

3 Q. Okay. I want to just show you some notes. And I am  
4 actually going to direct you to page four of these notes --

5 A. Okay.

6 Q. There's actually a circle in there, that you didn't  
7 put there, just see if it refreshes your recollection to the  
8 next time it was that you saw Anthony Hall on the video? Or if  
9 you want to look at all the notes you can do that too.

10 A. Okay.

11 (Handing document up to the witness.)

12 (Pause.)

13 A. Indication here is that Hall, he leaves at 17:13.  
14 According to my notes it appears that I see him at a particular  
15 segment. Those times aren't accurate because of what we  
16 discussed with not having the right time frame there.

17 Q. Right. And by not accurate, they are accurate to  
18 within 20, 30 minutes, half hour, an hour, whatever you want,  
19 right?

20 A. What I was told was I incorrectly assessed the time.  
21 Right. I should have went from the previous segment and added  
22 the time rather than the segment I was watching and added the  
23 time. So, whatever it is, it's wrong.

24 Q. Okay. You were told, I think by the district  
25 attorney it was wrong, within 20 or 30 minutes, is that right?

CROSS/DET.DIMURO/DEFENSE

1 A. Yes. Depending on what I am looking at.

2 Q. But your notes indicate that it was 17 --

3 A. Thirteen.

4 Q. Thirteen. Which is 5:13 in the afternoon regular  
5 peoples time?

6 A. Right.

7 Q. And that was on the 12th?

8 A. I believe it was the 12th.

9 Q. Okay. Thanks. Detective, some of the work you did  
10 on this case you did with Detective Donna Torres, yes?

11 A. Yes.

12 Q. And she's another detective in Manhattan North  
13 Homicide?

14 A. Yes.

15 Q. Helped you at times in this case?

16 A. Yes.

17 Q. And sometimes if you and her go out and do a piece of  
18 investigation on a case sometimes either you or her will fill  
19 out what's called a DD5, right?

20 A. Yes.

21 Q. And the DD5 basically lists the work that you did on  
22 a certain day, on a certain case, is that fair?

23 A. Correct.

24 Q. Okay. Would it be accurate to say that on, in March,  
25 really, there was a time that you went out and watched Mark

CROSS/DET.DIMURO/DEFENSE

1 Richardson walk?

2 A. There was several occasions when we tried to follow  
3 Richardson.

4 Q. Okay, several. And would it be accurate to say that  
5 one of them was on March 13th? If you don't recall, fair  
6 enough, and I will show you something.

7 A. Yeah. March 13th. I really -- it's pretty much in  
8 the time frame that we were following him.

9 Q. And would it be accurate to say that it was the  
10 afternoon, and it was, you knew where he lived, right?

11 A. Yes.

12 Q. Right. And you kind of setup in a location where you  
13 thought he might walk by, right?

14 A. Yes.

15 Q. And you were hoping to catch him as he came home from  
16 work, right?

17 A. Yes.

18 Q. And catch him, I just mean observe him, not grab him  
19 or anything?

20 A. Right.

21 Q. And would it be accurate to say that you saw what he  
22 was wearing when you saw him? And if you don't remember just  
23 ask me I will show you the 5.

24 A. I can recall that sometimes he wore the army jacket.  
25 I think he word a blue hoody at some point.



CROSS/DET.DIMURO/DEFENSE

1 Q. Okay. Well, this time would it be accurate to say he  
2 had blue jeans and green army jacket?

3 A. Sounds right.

4 Q. Also accurate to say you observed him carrying a  
5 black plastic bag in his hand?

6 A. I do remember that, yes.

7 Q. Thank you. Now, one of the things -- oh, I'm sorry,  
8 you told us that you were present when that MLI or the Medical  
9 Legal Investigator showed up at the scene, right?

10 A. Fredericks, yes.

11 Q. Mr. Fredericks. And you saw him begin to examine Ms.  
12 Abbott, right?

13 A. Yes.

14 Q. And you actually saw what Ms. Abbott was wearing at  
15 the time, right?

16 A. Yeah.

17 Q. And I see you filled out a 5 about getting to the  
18 scene and watching Fredericks?

19 A. Respond to the scene DD5.

20 Q. Would it be accurate to say she was wearing blue  
21 dungarees?

22 A. Yes.

23 Q. A white bra?

24 A. Yes.

25 Q. Blue panties?

CROSS/DET.DIMURO/DEFENSE

1 A. Yes.

2 Q. A black belt?

3 A. Yes.

4 Q. And white socks?

5 A. Yes.

6 Q. And be accurate to say you also noted she was  
7 wearing a grey sweatshirt, right?

8 A. Yes.

9 Q. And the condition of the grey sweatshirt you actually  
10 noted down in your 5, didn't you?

11 A. I believe so.

12 Q. That it was bloody, yes?

13 A. Yes.

14 Q. You indicated to the district attorney that you gone  
15 to the autopsy, right?

16 A. Yes.

17 Q. The autopsy wasn't performed by a Doctor Graham but a  
18 Doctor Tranchida, correct?

19 A. Correct.

20 Q. You indicated that it was procedure, that in a  
21 homicide you are really required to go, is that right?

22 A. Yes.

23 Q. And you are using it as a, in general, as a source to  
24 see what information can you get to guide your investigation?

25 A. Yes.

CROSS/DET.DIMURO/DEFENSE

1 Q. Okay. And you indicated that you watched as the  
2 Medical Examiner, Doctor Tranchida, gathered evidence from the  
3 deceased, yes?

4 A. Correct.

5 Q. Now, at times you carry a spiral notebook, right?

6 A. Yes.

7 Q. And in a spiral notebook you can jot down information  
8 that you are observing so you have some notes, right?

9 A. Yes.

10 Q. So you can use the notes too at a later time, you can  
11 fill out police documents, right?

12 A. Correct.

13 Q. Such as DD5, right?

14 A. Yes.

15 Q. And at times you did that in this case, correct?

16 A. Yes.

17 Q. One of the reasons you make notes is that you know in  
18 any investigation, especially in a homicide, you may be called  
19 upon to give information about something you observed even  
20 years later, right?

21 A. True.

22 Q. Okay. So you take the notes as carefully as you can,  
23 right?

24 A. I try to.

25 Q. And you do your Fives, by that I mean your DD5s, the

CROSS/DET.DIMURO/DEFENSE

1 best you can, right?

2 A. Yes.

3 Q. You indicated that you saw -- by the way, you  
4 actually made some notes, right, as you observed Doctor  
5 Tranchida doing the autopsy?

6 A. I believe I did.

7 Q. And you watched as he did swabs, right?

8 A. Yes, I did.

9 Q. And you watched also the fingernails were scraped,  
10 right?

11 A. Yes.

12 Q. And you made a note of that, right?

13 A. Yes.

14 Q. And you watched as, what's known as the whole rape  
15 kit was completed, right?

16 A. Yes.

17 Q. And you noted that in your spiral notebook, right?

18 A. Correct.

19 Q. Be accurate to say that you also saw that there was a  
20 cord that was wrapped around in some fashion around Helen  
21 Abbott's neck, right?

22 A. That's correct.

23 Q. And it would be accurate to say you watched as the  
24 cord which had been around the neck was swabbed by Doctor  
25 Tranchida, right?

CROSS/DET.DIMURO/DEFENSE

1 A. Correct.

2 MR. KLEIN: Detective, thank you very much.

3 THE COURT: Mr. Bogdanos.

4 MR. BOGDANOS: I do have redirect. We can break  
5 now or --

6 THE COURT: Yes, it is one o'clock.

7 All right. Thank you.

8 Ladies and gentlemen, we will take our lunch break  
9 now and we will resume the trial at 2:15. Please do not  
10 discuss the case.

11 (The jury was excuse for a luncheon recess and exits  
12 the courtroom.)

13 (The Trial was adjourned for a luncheon recess.)

14 (Continued on next page.)

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1 A F T E R N O O N S E S S I O N

2 THE COURT: Are both sides ready for the jury?

3 MR. BOGDANOS: Yes, Judge.

4 THE COURT: May we have the jury, please.

5 (Jury entered the courtroom.)

6 THE COURT: All right, Jeanette.

7 THE COURT CLERK: Case on trial continues. People  
8 of the state of New York against Mark Richardson. The  
9 defendant, his attorneys, and the assistant district  
10 attorney are present. Would both sides stipulate all jurors  
11 are present and properly seated?

12 MR. BOGDANOS: Yes.

13 MR. KLEIN: Yes.

14 THE COURT: Thank you. Good afternoon, ladies and  
15 gentlemen, we are going to go back to Detective Dimuro. I  
16 believe Mr. Klein has a few more questions.

17 MR. BOGDANOS: And for the record no objection.

18 THE COURT: Thank you.

19 (Witness entered the courtroom.)

20 THE COURT: Good afternoon, detective. You are  
21 still under oath. Mr. Klein is going to question you  
22 further.

23 CROSS-EXAMINATION

24 BY MR. KLEIN CONT'D.:

25 Q I am sorry. Very brief.

1           A     Okay.

2           Q     I think you and I made a mistake and I want to see if  
3 we can clear it up, okay?

4           A     We have made mistakes, yes.

5           Q     You said in response to my questioning that the next  
6 time you saw Hall leave was at 1713 on the twelfth, right?

7           A     Friday -- it's -- you know, there is other times that  
8 he is on the video but that's the last time I think we see  
9 him.

10          Q     Let's -- I am going to show you your notes.

11          A     All right.

12          Q     Okay.

13                     (Handing.)

14          Q     And first let me just ask you a question about the  
15 notes, okay?

16          A     Okay.

17          Q     It's accurate to say that on the left side columns you  
18 have the date and then the times you're watching?

19          A     Right.

20          Q     Right; and then you have some notations like 1713,  
21 Anthony Hall?

22          A     Yes.

23          Q     Right? But the 1713 doesn't really refer to the time  
24 in real life that he is leaving? That refers to a clip time,  
25 right?

1       **A**    Yes.

2       **Q**    And actually we are talking about seeing him leave in  
3 the morning hours of the twelfth, right?

4       **A**    Yes, several times.

5       **Q**    Okay, so he leaves then some time around nine in the  
6 morning on the twelfth, right?

7       **A**    Yes.

8       **Q**    And then he comes back some time in the afternoon of  
9 the twelfth also, right?

10      **A**    Yes.

11      **Q**    And then also in the evening, he goes out and then  
12 comes back very late morning hours of the thirteenth. Do you  
13 remember that?

14      **A**    I don't remember the 13th but what you say is correct.  
15 He is seen leaving several times throughout the day on the  
16 twelfth.

17      **Q**    Okay, is it accurate though -- the first time you  
18 observe him leaving on the twelfth -- and look at your notes if  
19 you want?

20      **A**    Okay.

21      **Q**    -- is that 9:00, 9:45ish time?

22      **A**    I am not sure of the exact time but it is true he  
23 leaves in the morning.

24      **Q**    Of the twelfth?

25      **A**    Yes.



1 MR. KLEIN: Thanks a lot.

2 THE COURT: Thank you, Mr. Klein. Mr. Bogdanos.

3 MR. BOGDANOS: Yes, very briefly.

4 REDIRECT EXAMINATION

5 BY MR. BOGDANOS:

6 Q Detective, you mentioned to Mr. Klein a moment ago and  
7 to the jury earlier that you have watched this video, the Viper  
8 video often?

9 A Often?

10 Q Yes. We are not going to ask you how many hours but a  
11 lot of hours?

12 A Yes.

13 Q Both in the Viper office itself?

14 A Mostly in the 25.

15 Q And -- thank you -- and then the 25th Precinct as well?

16 A Right.

17 Q Have you also had occasion to watch it in my office, in  
18 the District Attorney's Office?

19 A Yes.

20 Q Again no one is going to ask -- for hours and hours?

21 A Yes.

22 Q And have you had the opportunity to -- withdrawn.

23 You mentioned that there was an issue with the timing  
24 and it was explained to you how your timing was off?

25 A Yes.

1           **Q**    You thought the name of the clip meant the beginning of  
2 the clip?

3           **A**    Yes.

4           **Q**    And it's really the end?

5           **A**    Yes.

6           **Q**    But that -- that -- when you were talking to Mr. Klein  
7 before about your mistake that's what you were talking about;  
8 confusing the end with the beginning of each clip when he was  
9 asking you about timing?

10                    You want me to rephrase that question.

11           **A**    Well, I mean -- how can I put -- I am not sure if  
12 that's what Mr. Klein was saying my mistake was.

13           **Q**    I am not talking about now just a moment ago. We are  
14 going to get to Anthony Hall in a second.

15           **A**    Okay.

16           **Q**    Earlier before lunch?

17           **A**    Yes.

18           **Q**    You had said to Mr. Klein I made a mistake?

19           **A**    Yes, in writing the times down I erroneously put the  
20 time as the beginning of the tape I was watching rather than --

21           **Q**    It's the end?

22           **A**    Exactly.

23           **Q**    So just so the record is clear that's what you were  
24 talking about earlier before lunch?

25           **A**    Yes. Yes. Yes.

1           **Q**     So now we will -- what you and Mr. Klein was talking  
2 about afterwards.

3           **A**     Okay.

4           **Q**     And you have seen as you just told us that video for  
5 hours and hours in my office?

6           **A**     Yes. Yes.

7           **Q**     And have you had an opportunity to review a timeline of  
8 the sightings of Mark Richardson, Anthony Hall, Hoody, Umbrella  
9 Man?

10          **A**     Yes.

11          **Q**     B-Hat, all those people?

12          **A**     Yes.

13          **Q**     I would ask that the detective be handed what I request  
14 be deemed marked People's 96.

15                   (ADA Bogdanos conferred with Defense Attorney  
16 Klein.)

17                   MR. BOGDANOS: It was the 1 through 111. I am  
18 sure I have an extra copy if you can't find it. This is 96.

19                   For the record this is the complete timeline, not  
20 the one that was shortened for the charts.

21          **Q**     Do you have it? Copies have been given to the defense  
22 but I could get you -- you are good.

23                   All right, see this particular timeline?

24          **A**     Yes, I do.

25          **Q**     Start and it's got actually 111 different entries?

1       **A**     Yes.

2       **Q**     And does this timeline fairly and accurately show --  
3 actually all of the times that Mark Richardson, Anthony Hall,  
4 B-Hat -- who am I forgetting -- Hoody; and Helen Abbott and  
5 Cheryl Abbott up until the end appear on that video on Friday,  
6 Saturday and Sunday?

7       **A**     I believe it does.

8               MR. BOGDANOS: Thank you. I will offer that in  
9 Evidence as People's 96.

10              THE COURT: I am sorry.

11              MR. KLEIN: Let me see just once more. I know we  
12 made so many copies.

13              MR. BOGDANOS: I could give you more copies.

14              (Defense Attorney Klein conferred with defendant.)

15              MR. KLEIN: Fine. No objection.

16              THE COURT: People's 96 is admitted.

17       **Q**     And just -- just so we are clear, detective, for the  
18 record, the only difference between this one and the shortened  
19 one or edited one you looked at before is this has all the  
20 entries and the other one you were working from before just had  
21 a selection?

22       **A**     Correct.

23       **Q**     Other than that there is nothing different about them?

24       **A**     No.

25       **Q**     Thank you. And, in fact, I am not going to ask you to

1 go through them and I am not going to turn -- put the video up,  
2 but that lists all of Anthony Hall's entries and exits?

3 A Yes.

4 Q Now if you would go to the exhibit itself, 96 in  
5 Evidence, and I think it's 9:44 Saturday morning, the twelfth,  
6 if you could look at that entry.

7 A Okay.

8 Q Read that entry into the record?

9 A 9:44 a.m., Hall enters Elevator B at 11.

10 Q So that's the first -- time just so we are more  
11 precise -- that's the first time Hall is seen after being seen  
12 getting off the elevator with Richardson earlier that Friday  
13 morning?

14 A It's the first time that we are talking about him on  
15 video after we discuss the condensed version, right.

16 Q You got it. So he is seen at 9:44?

17 A Correct.

18 Q He is actually leaving the building?

19 A Yes.

20 Q Does he leave the building?

21 A Yes.

22 Q When does he come back?

23 A He comes back in at 3:59.

24 Q 3:59 p.m. on the twelfth?

25 A Yes.

1 Q And does he leave again?

2 A Yes.

3 Q When?

4 A 9:27 p.m.

5 Q Saturday night?

6 A The twelfth, yes.

7 Q Does he come back?

8 A Yes.

9 Q When?

10 A 12:50 a.m. on the thirteenth Hall enters building.

11 Q And does he leave again?

12 A No.

13 Q Eventually he does? Isn't it 1:11. Is there an AH?

14 A It says N -- again AH enters building at 5:24 p.m.

15 Q Got it. I have nothing further on that.

16 MR. BOGDANOS: And nothing further of the  
17 detective. Thank you.

18 MR. KLEIN: Thank you, detective.

19 THE WITNESS: Thank you.

20 THE COURT: That completes your testimony. Thank  
21 you.

22 THE WITNESS: Thank you.

23 (Witness exited the courtroom.)

24 MR. BOGDANOS: The People next call to the stand,  
25 your Honor, Ms. Erica Grazette of the Parks Department.

1 (Witness enters the courtroom.)

2 E R I C A G R A Z E T T E , called as a witness by and on  
3 behalf of the People, having been first duly sworn and/or  
4 affirmed, testified as follows:

5 THE WITNESS: Yes.

6 THE COURT OFFICER: Have a seat, please. If you  
7 could just pull your chair up to the microphone; and for the  
8 record if you could just state your name and spell your last  
9 name?

10 THE WITNESS: My name is Erica Grazette, last name  
11 G-R-A-Z-E-T-T-E.

12 THE COURT: Thank you.

13 MR. BOGDANOS: May I inquire, your Honor?

14 HE COURT: Yes.

15 DIRECT EXAMINATION

16 BY MR. BOGDANOS:

17 Q Thank you. Good afternoon, Ms. Grazette.

18 A Good afternoon.

19 Q Ma'am, thank you for your patience today. I know you  
20 have been waiting a long time. Ma'am, what do you do for a  
21 living?

22 A I am an employment counselor for the Parks Opportunity  
23 Program. That is with the Parks Department.

24 Q And this Parks Opportunity Program, you call it POP?

25 A Yes.

1           **Q**   How long have you been with the Parks Department  
2 altogether?

3           **A**   Since '93.

4           **Q**   And how long have you been with the POP Program?

5           **A**   I would say about 2002, 2003.

6           **Q**   And what are your responsibilities within the POP  
7 Program?

8           **A**   Basically our responsibilities to teach people how to  
9 find employment. Welfare to work program. Our clients are sent  
10 to us by Human Resources Administration; and basically they come  
11 to the Parks to work for six months and during that six months,  
12 they are enrolled in a job search program; so basically that's  
13 where I come in and I teach classes on how to, you know, fill  
14 out an application, how to do a resume, how to interview.  
15 Things like that.

16          **Q**   Did there come a time in the very end of December, 2007  
17 or the beginning of January 2008, when you had occasion to meet  
18 an individual named Mark Richardson in your capacity as a  
19 counselor in the POP Program?

20          **A**   Yes.

21          **Q**   Do you see Mark Richardson in the courtroom today?

22          **A**   Yes.

23          **Q**   Would you please point to him and indicate for the  
24 record what he is wearing today.

25          **A**   Black sweater, black pants, black sneakers.



1 MR. BOGDANOS: Indicating the defendant, your  
2 Honor.

3 THE COURT: Yes.

4 MR. BOGDANOS: Thank you.

5 Q Ms. Grazette, do you have a recollection of exactly  
6 when you met or just a rough time frame?

7 A Probably just a rough time frame; around that time  
8 2007, 2008.

9 Q And specifically now the beginning of January of 2008,  
10 what was the relationship between you and Mr. Gra -- between you  
11 and Mr. Richardson -- excuse me -- if you could explain please.

12 A Again I was his employment counselor so he would come  
13 to me twice a month for his employment classes.

14 Q And are you familiar with where he was on the day of  
15 the January 10, 2008?

16 A No, I don't really.

17 Q Would looking at the Parks Department records for  
18 Mark Richardson refresh your recollection?

19 A Yes.

20 Q And you've actually reviewed them before coming to  
21 court?

22 A (Nod head affirmatively up and down.)

23 Q If I could have this deemed marked People's 97 for  
24 Identification; and offer it into Evidence as the Parks's  
25 Department records for Mr. Richardson with our earlier

1 understanding?

2 MR. KLEIN: Fine.

3 THE COURT: People's 97 is so admitted.

4 Q So if you would please take 97 in Evidence,  
5 Ms. Grazette, and if you would actually go you will see there  
6 are blue tabs at the side. If you go to the third blue tab and  
7 just take a look at that document and just see if it refreshes  
8 your recollection.

9 A Okay, yes, this is a pay letter that we give our  
10 clients either when they go out to do job search or they come to  
11 our office for anything. Basically this gives them credit or an  
12 hour credit for the day.

13 Q And so indicating that on January 10th having looked at  
14 that, that record, what did Mr. Richardson do to the best of  
15 your recollection?

16 A It's signed by Mrs. Marcia Fletcher, which was the job  
17 developer at the time, so he was probably approved for some sort  
18 of job search activity.

19 Q You don't know what it was?

20 A No.

21 Q And because he was approved for the job search, he  
22 would have gotten paid for the whole day?

23 A For the whole day.

24 Q Regardless of where he was?

25 A Right.

1 MR. BOGDANOS: Thank you. I have nothing -- you  
2 may need it again so why don't you hold onto it for a  
3 moment. You could put it on the counter if you want.

4 Q Now if we could move -- would you see -- when  
5 Mr. Richardson -- withdrawn. This is going to be a terrible  
6 question so I will start all over again.

7 How often on average would you see Mr. Richardson.

8 A Like I said before twice a month.

9 Q And where was your office located in 2008?

10 A Queens, Passerele Building.

11 Q Spell that for reporter.

12 A P-A-S-S-E-R-E-L-E.

13 Q But you wouldn't see Mr. Richardson on a day-to-day  
14 basis if you were working?

15 A No.

16 Q Just the counseling?

17 A Just the counseling piece.

18 Q Now if I could fast forward to March -- February 6th of  
19 2008. Do you recall seeing Mr. Richardson on that date on  
20 February 6th of 2008?

21 A Yes.

22 Q Would you tell the jury how that came about?

23 A Okay, Mark was in the building for I believe he was  
24 doing his taxes because we do the taxes for our clients at that  
25 time. After he got his taxes done on that day, came back to my

1 office just to say, hey. I kind of asked him, you know, how can  
2 I help you. Basically he kind of needed a letter.

3 Q If you are saying his words, you have to tell us who is  
4 speaking.

5 A Oh, sorry, I guess Mark.

6 Q It's okay. Tell us what he said.

7 A He needed -- if I could help him out with a letter that  
8 he needed for his parole officer stating where his whereabouts  
9 were on I guess that specific day.

10 Q And what specific day did he ask you to write a letter  
11 about?

12 A January 10th I believe that's --

13 Q Do you remember as you sit here now exactly what days  
14 it was?

15 A Not offhand.

16 Q Did you write a letter for him?

17 A Yes, I did.

18 Q Would looking at the letter refresh your recollection  
19 as to which days or day or days he asked?

20 A Yes.

21 MR. BOGDANOS: I would ask that this be deemed  
22 marked People's 98 for Identification. For the record it is  
23 the letter from Ms. Grazette. I will hand it to the  
24 witness, please.

25 (Handing.)

1           **Q**   Take a look at that letter. Just read it to yourself.

2           **A**   Okay.

3           **Q**   And does that refresh your recollection as to the days  
4 he was asking you to write a letter saying that he was working?

5           **A**   Yes.

6           **Q**   Which days?

7           **A**   Well, on January 10th he was on a preapproved job  
8 search.

9           **Q**   Wait. That's not the question yet. Which days is he  
10 asking you to say you can vouch for his whereabouts?

11          **A**   The tenth.

12          **Q**   Any other day?

13          **A**   No.

14          **Q**   Read the rest of the letter.

15          **A**   Okay.

16                   THE COURT: To yourself he means.

17          **A**   Okay.

18          **Q**   Any other days?

19          **A**   January 11th.

20          **Q**   So, wait. Don't read the letter yet -- don't read it  
21 out loud. It is not in Evidence. The two days --

22          **A**   Okay.

23          **Q**   -- the two days he asked you to vouch for his  
24 whereabouts was January 10th and January 11th of 2008?

25          **A**   Ah-huh.

1           **Q**    You are certain?

2           **A**    Ah-huh.

3                   THE COURT: Is that a yes?

4                   THE WITNESS: Yes. Sorry.

5           **Q**    You have -- so what did he tell -- ask you to do based  
6 on those two days.

7           **A**    Basically, he needed a letter like I said before.

8           **Q**    He said to you I need a letter?

9           **A**    I need a letter.

10          **Q**    I am sorry to do this to you so many years later,  
11 please tell us what he said as best you can. I know it's a long  
12 time.

13          **A**    I need a letter to give to my parole officer in  
14 connection I guess to where his whereabouts were as to that  
15 specific day. I went back into the records to check for his  
16 activity; so when they do job search they are to fill out an  
17 activity report, so that I can verify that information.

18                   Then also he asked me to put in the letter that he was  
19 actually working on the eleventh and, you know, stayed past to  
20 do some overtime on that specific day.

21          **Q**    And with regard to the tenth, were you able to verify  
22 that, in fact, he had been approved for some job search on the  
23 tenth?

24          **A**    Yes.

25          **Q**    With regard to the eleventh before you wrote the letter

1 for him, were you able to verify that he was, in fact, working  
2 on the eleventh; and according to him had actually even stayed  
3 extra and worked overtime on the eleventh?

4 A No, I did not verify that.

5 Q But you wrote it -- you wrote the letter?

6 A I wrote it. Good faith.

7 Q And is this -- is this the letter that you wrote?

8 A Yes.

9 Q Did you write it right in front of him?

10 A Yes.

11 Q He was sitting right next to you?

12 A Yes. Well, not next to me but --

13 Q I get it, across from the desk?

14 A Yes.

15 Q And did you write it first and then type it or just  
16 type it directly?

17 A Just kind of typed it directly.

18 Q And is he sitting across your desk from you as you are  
19 typing?

20 A Yes.

21 Q And may we take it, it's a computer not a typewriter?

22 A Right.

23 Q And so are you saying it out loud? Are you taking  
24 dictation? Explain to us the process of how you're typing this  
25 letter for him.

1       A     Not really. He pretty much told me what he needed the  
2 letter for so I just kind of went into that mode. Typed it up.  
3 Didn't really take any notes or anything.

4       Q     Okay, and then -- and then you finished?

5       A     Yes.

6       Q     Did you read it back to him and then print it or did  
7 you print it right away?

8       A     No, I printed it. Printed it on letterhead and signed  
9 it.

10      Q     And then what did you do with it?

11      A     Handed it to Mr. Richardson.

12      Q     You gave it to him?

13      A     Ah-huh.

14      Q     Did you make yourself a copy?

15      A     Yes.

16      Q     Is that what we have here in front of us?

17      A     Yes.

18      Q     Has that been altered or tampered with in any, way,  
19 shape or form from the time you prepared, typed, and signed that  
20 letter for Mr. Richardson?

21      A     No.

22      Q     I think it has -- maybe it's got some holes in it?

23      A     Some holes in it.

24      Q     Apart from that, it is the same letter?

25      A     (Nod head affirmatively up and down.)



1 MR. BOGDANOS: I will offer that in evidence  
2 People's 98.

3 MR. KLEIN: No objection.

4 THE COURT: Thank you. 98 is admitted.

5 Q Then later that same day, do you recall meeting a New  
6 York City police detective?

7 A Yes.

8 Q Male or female?

9 A Female.

10 Q Do you happen to remember her name?

11 A Just the first name Donna.

12 Q And by the way have you seen her recently?

13 A I think so.

14 Q Do you think she is in the witness waiting room?

15 A Yeah, I think so.

16 Q All right, and when you met this detective, the female  
17 detective, did she ask you anything?

18 A She asked me about Mark Richardson, you know, a client  
19 for the Parks Department. Did I know where he was, you know. I  
20 mentioned he was here earlier today.

21 Q I am sorry I don't think we got all of that.

22 A Sorry.

23 Q It's, all right, you said you had mentioned he was here  
24 earlier today?

25 A Yes.

1           **Q**    To the detective?

2           **A**    To the detective.

3           **Q**    When you say "he" meaning Mr. Richardson?

4           **A**    Mr. Richardson.

5           **Q**    And you told the detective that?

6           **A**    Yes.

7           **Q**    And she asked -- did she ask for anything from you?

8           **A**    His -- a copy of his time card because they were in  
9 question about his day I guess he was working for the Parks  
10 Department.

11          **Q**    And did you happen to mention in this conversation with  
12 detective -- with detective we will call her Donna, did you  
13 happen to mention that you had written a letter for him?

14          **A**    I don't remember.

15          **Q**    Did she ask you to fax her anything, any material when  
16 you had it?

17          **A**    Yes. Once I got a copy of the time card, I was, you  
18 know, to fax it to her.

19          **Q**    So let's move now -- let me -- let's finish this and  
20 then we will come back. Let's move to the next day February 7,  
21 2008. Did you fax her anything?

22          **A**    Yes, the time card when I finally got a copy of it, I  
23 faxed it to her office.

24          **Q**    And did you also fax a copy of the letter?

25          **A**    Yes.

1 MR. BOGDANOS: I would ask that the witness be  
2 handed I request marked 99 for Identification. For the  
3 record a faxed copy of that.

4 Q Please take a look at that. It is being handed to you  
5 now.

6 (Handing.)

7 Q And do you recognize it?

8 A Yes.

9 Q Is that the actual fax copy that you faxed of the  
10 letter to the detective, the female detective?

11 A Yes.

12 Q I will offer -- that hasn't been altered or tampered  
13 with in anyway other than when you faxed it, other than a faxed  
14 time stamp on it?

15 A No.

16 MR. BOGDANOS: I will offer that in Evidence  
17 People's 99, a copy of which has been previously given to  
18 defense.

19 THE COURT: Admitted?

20 MR. KLEIN: Yes.

21 Q Now, let me go back to February 6th again, do you have  
22 any additional contact with Mr. Richardson on the sixth?

23 A On the sixth, after I spoke to Donna and I realized  
24 what was going on, I did try to contact Mr. Richardson to say  
25 hey, you know, there has been some activity here. I think you

1 need to reach out and see what's going on.

2 Q And did you actually talk to Mr. Richardson?

3 A Yes.

4 Q So what you just told us you actually said?

5 A Right.

6 Q Fair enough. And did -- when the female detective  
7 left, did she leave you anyway of getting a hold of her?

8 A Yes, she left me her business card.

9 Q And did her card have her cell phone number on it?

10 A I believe so.

11 Q And did you give Mr. Richardson anyway of contacting  
12 this female detective?

13 A Yes, I gave him the information.

14 Q Which means you gave him?

15 A The telephone number.

16 Q And presumably her name. If it's her card, she had her  
17 name on it?

18 A Yes.

19 Q And so you gave that to Mr. Richardson over the phone  
20 or in person?

21 A Over the phone.

22 MR. BOGDANOS: Nothing further. Thank you very  
23 much, Ms. Grazette.

24 THE COURT: No questions. Thank you very much.  
25 (Witness exited the courtroom.)

1 MR. BOGDANOS: People next call to the stand  
2 Mr. Frank Ricotta, please.

3 (Witness entered the courtroom.)

4 F R A N K R I C O T T A , called as a witness by and on behalf  
5 of the People, having been first duly sworn and/or affirmed,  
6 testified as follows:

7 THE WITNESS: Yes.

8 THE COURT OFFICER: You could just have a seat,  
9 please. In a loud clear voice, if you could just state your  
10 name, spell your last name for the record.

11 THE WITNESS: It's Frank Ricotta, R-I-C-O-T-T-A.

12 THE COURT OFFICER: Just give your shield number.

13 THE WITNESS: Shield 179. I work for the New York  
14 City Department of Parks and Recreation.

15 MR. BOGDANOS: May I inquire, your Honor?

16 THE COURT: Yes.

17 MR. BOGDANOS: Thank you.

18 DIRECT EXAMINATION

19 BY MR. BOGDANOS:

20 Q Good afternoon, Mr. Ricotta.

21 A Good afternoon.

22 Q Thank you. And I am sorry, I know you have been  
23 patiently waiting today. Thank you for that. Would you tell us  
24 your occupation?

25 A I am a principal park supervisor.

1       **Q**    If you could do that again.

2       **A**    Principal park supervisor for the Department of Parks.

3       **Q**    How long have you been with the Department of Parks?

4       **A**    Twenty-nine (29) years.

5       **Q**    And how long have you been in your current position?

6       **A**    Six (6) years.

7       **Q**    And would you briefly tell us your duties and  
8 responsibilities.

9       **A**    Set up work crews, work assignments. Get the crews out  
10 in the morning. Do inspections. Go to meetings.

11       **Q**    Do you have any involvement with the job training  
12 program and the Parks Opportunity Program?

13       **A**    Yes, I use to have involvement with that.

14       **Q**    Explain that very briefly.

15       **A**    I use to do the training when it first started in  
16 Queens. Trained what they called JTP's. Trained them to do  
17 work and then get them on my crew, my work crew, and get them to  
18 do various work assignments.

19       **Q**    Work assignments in the New York City parks?

20       **A**    Yes, just for the Parks Department.

21       **Q**    Wherever the park is?

22       **A**    Yes.

23       **Q**    In that capacity if I could invite your attention now  
24 to late 2007, the November, December timeframe into January of  
25 2008. Do you recall that timeframe generally?

1       **A**    Yes.

2       **Q**    And during that timeframe did you have occasion to meet  
3 an individual named Mark Richardson?

4       **A**    Yes.

5       **Q**    Do you -- you met him in your capacity as in the JTP or  
6 Parks Opportunity Program?

7       **A**    Yes.

8       **Q**    Do you see Mr. Richardson in the courtroom today?

9       **A**    Yes.

10      **Q**    Would you please point to him and for the record just  
11 give us some -- something he is wearing, some article.

12      **A**    He is right there in the black sweat shirt.

13               MR. BOGDANOS: Indicating the defendant for the  
14 record.

15               THE COURT: Yes.

16      **Q**    When you -- after you met Mr. Richardson, what was  
17 your, you know, business relationship with Mr. Richardson?

18      **A**    I met him at a different work assignment. He was at  
19 our main office headquarters first so I told him I was going to  
20 get him on my crew because of his size. It is a waste to have  
21 him cleaning bathrooms when I could have him on my crew doing  
22 fence work and asphalt.

23      **Q**    And you did that?

24      **A**    Yes.

25      **Q**    And who was respons -- withdrawn. Did Mr. Richardson

1 have a particular set hours he was to work?

2 A Yes.

3 Q And was there any record keeping associated with his  
4 work?

5 A Yes.

6 Q What was that?

7 A As far as his time when he worked, time card, we would  
8 punch in. We had a punch clock. He would punch in and out.  
9 His days off were probably Saturday and Sunday.

10 Q Who was responsible for the maintenance of his time  
11 cards?

12 A I was.

13 Q And who would sign his time cards?

14 A I would.

15 Q And would you verify whether he was or was not working  
16 in order to get paid by the city?

17 A I would.

18 Q And did you do that?

19 A Yes.

20 Q If I could invite your attention -- ordinarily what  
21 were his hours?

22 A Probably 7:00 to 3:30.

23 Q An as you said Monday through Friday?

24 A Yes.

25 Q Ordinarily -- let's pick Friday. He would work 7:00 in



1 the morning Friday to 3:30 p.m.?

2 A Right, or weekends and overtime.

3 Q So if he worked weekends he would get paid overtime?

4 A Yes.

5 Q During the week of January 6th of 2008, to January 12th  
6 of 2008, were you his supervisor?

7 A Yes.

8 Q Were you responsible for his time cards?

9 A Yes.

10 Q Did you, in fact, sign his time cards for those dates?

11 A Yes.

12 Q Have you had an opportunity before coming to court to  
13 review those time cards for those dates --

14 A Yes.

15 Q -- of Mr. Richardson?

16 A Yes.

17 Q And did you find your handwriting and your signature?

18 A Yes.

19 MR. BOGDANOS: I ask that the witness now be  
20 handed what's previously been received in Evidence as 98 --  
21 97 -- 97.

22 (Hanging.)

23 Q If you would take a look at those certified records and  
24 just you don't -- don't go through all of them.

25 A Right.

1       **Q**    They are tabbed on the side. I think it is the second  
2 blue tab. Just open that up and tell us if you recognize that  
3 page.

4       **A**    Yes, I do.

5       **Q**    You've seen it before?

6       **A**    Yes.

7       **Q**    You've had an opportunity to examine it before?

8       **A**    Yes.

9       **Q**    And then go to the next page if you would. Same  
10 question.

11      **A**    Yes.

12      **Q**    Can you explain how a time card really looks. These  
13 are copies?

14      **A**    Well, this is front and back.

15      **Q**    So what appears as one page in the records are the  
16 front of the time cards and then the second page are the back?

17      **A**    Yes.

18      **Q**    But in reality it's a normal time card front and  
19 back?

20      **A**    Yes.

21      **Q**    How many time cards for a week?

22      **A**    For one person?

23      **Q**    One person, one week.

24      **A**    Oh, one card per week.

25      **Q**    One card, one person per week?

1           **A**     Right, from Sunday -- from Sunday to Saturday.

2           **Q**     So for the week for Mr. Richardson for the week  
3 beginning the sixth and including Thursday the tenth and Friday  
4 the eleventh, do you have that page opened in front of you?

5           **A**     Yes.

6           **Q**     And does your signature appear on that time card?

7           **A**     Yes.

8           **Q**     Where was Mr. Richardson on Thursday, January 10th of  
9 2008?

10          **A**     He was at a POP counseling.

11          **Q**     So not with you?

12          **A**     No.

13          **Q**     And how do you know he was at POP?

14          **A**     Because I put down POP and if I put on the back, if I  
15 signed it, it's documented with my initial. That means he gave  
16 me a letter that he got paid for that day that he was there.

17          **Q**     And now if we can go to Friday, January 11th?

18          **A**     Okay.

19          **Q**     Was Mr. Richardson working on Friday January 11th?

20          **A**     No.

21          **Q**     How do you know?

22          **A**     Cause I scheduled him a day off.

23          **Q**     How do you know that?

24          **A**     Cause, well, on the back of time card I wrote down  
25 preschedule which means he told me in advance that he needed

1 that day off and I signed it approved it and he got paid for the  
2 day.

3 Q And there is an entry on the time card itself that says  
4 for that Friday it says eight and then it appears to say P/B.  
5 What is that?

6 A It's a personal business day, and he got paid eight  
7 hours for the day.

8 Q Okay.

9 A Well, it was prescheduled P/B.

10 MR. BOGDANOS: So if I could ask that the witness  
11 now be handed People's -- you know what, I don't need to  
12 hand it to him. I will read it.

13 Q Mr. Ricotta, if you would listen to this statement on  
14 People's 98; and please tell us if this is true or false: "It  
15 should be noted that January 11, 2008, was a payday.  
16 Mr. Richardson stated that he worked that day and stayed after  
17 work to receive his paycheck." Is that true or false?

18 A That's false.

19 Q Thank you. Nothing further.

20 THE COURT: Mr. Klein? All right, that completes  
21 your testimony, sir.

22 (Witness exited the courtroom.)

23 MR. KLEIN: Can we come up?

24 (Off-the-record bench conference.)

25 THE COURT: Ladies and gentlemen, sorry about

1 that, we are going to take our break now. The next witness  
2 will be a longer one and it will take us to the end of the  
3 day; so it's best to rather than interrupt her testimony, we  
4 will take the break now. Get you right back in the  
5 courtroom. Please do not discuss the case. Thank you.

6 (Jury exited the courtroom.)

7 (Short recess.)

8 (Transcript continued on the next page.)

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DIRECDT/DET.TORRES/PEOPLE

1 T-5 - Peo. V Mark Richardson, Ind.#3534/08

2 September 21, 2011:

3 THE COURT: Ready for the jury?

4 MR. BOGDANOS: Yes.

5 MR. KLEIN: Yes.

6 THE COURT: The jury, please.

7 (The jury enters the courtroom.)

8 THE COURT CLERK: Case on trial continued. The  
9 People of the State of New York against Mark Richardson. The  
10 defendant, his attorneys, and the assistant district attorney  
11 are present. Will both sides stipulate that all jurors are  
12 present and properly seated?

13 MR. BOGDANOS: Yes.

14 MR. KLEIN: Yes.

15 THE COURT: Thank you. Mr. Bogdanos.

16 MR. BOGDANOS: Yes, Your Honor. Before  
17 proceeding the People would respectfully offer into evidence  
18 People's Exhibit 89 for identification, the wallet. I didn't  
19 formerly offer it when the detective was on the stand. Sorry.

20 MR. KLEIN: That's okay.

21 THE COURT: People's 89 is now admitted.

22 (People's Exhibit 89, wallet, was received in  
23 evidence.)

24 MR. BOGDANOS: And the People now call to the  
25 stand Detectives Donna Torres.

Glenn J. Merola, Sr. Court Reporter

DIRECDT/DET.TORRES/PEOPLE

1 (The witness, Det. Donna Torres, enters the  
2 courtroom, takes the witness stand, is duly  
3 sworn/affirmed in by the Clerk of the Court, responds to  
4 the oath and testifies as follows:)

5 THE COURT CLERK: Do you solemnly swear or  
6 affirm the testimony you are about to give shall be the  
7 truth, the whole truth, and nothing but the truth, so  
8 help you God?

9 THE WITNESS: I do.

10 THE COURT OFFICER: Have a seat, please. In a  
11 loud clear voice, if you could, state your name, spell  
12 your last name, gave your shield number and present  
13 assignment.

14 THE WITNESS: Detective Donna Torres.  
15 T-o-r-r-e-s. Shield 2904, Manhattan North Homicide Task  
16 Force.

17 MR. BOGDANOS: May I inquire, Your Honor?

18 THE COURT: You may.

19 DIRECT EXAMINATION

20 BY MR. BOGDANOS:

21 Q. Good afternoon, Detective.

22 A. Good afternoon.

23 Q. Would you tell us how long you have been on the New  
24 York City Police Department all together?

25 A. I had just started my 28th year in July.

Glenn J. Merola, Sr. Court Reporter

DIRECDT/DET.TORRES/PEOPLE

1 Q. And how long viewed be a detective?

2 A. Seventeen years.

3 Q. And how long have you been at Manhattan North  
4 Homicide?

5 A. Since February of 2002.

6 Q. And do you know a Detective Gerry or Gerard Dimuro?

7 A. Yes. He is one of my partners.

8 Q. Up in the Homicide Squad?

9 A. Yes.

10 Q. Were you aware, going back if we could to 2008, were  
11 you aware that Detective Dimuro had received an assignment of  
12 relevance to this case and this jury?

13 A. Yes.

14 Q. And very, very briefly, the assignment was what?

15 A. To investigate the homicide murder of Helen Abbott.

16 Q. And he had picked it up, the way you all homicide  
17 detectives pick it up, you assist another precinct detective?

18 A. Yeah. We're more of a support group. We support the  
19 precinct detective and we each take turns, who's next, who's  
20 next, who's next, just as the squad does.

21 Q. And this just happened to be Detective Dimuro's next?

22 A. Yes.

23 Q. And, although, were you assigned to that case at all?

24 A. No. I was actually on another case.

25 Q. Nonetheless, over the course of the last several



DIRECT/DET.TORRES/PEOPLE

1 years, have you periodically had some involvement in the case  
2 in your capacity as a homicide detective?

3 A. In this case, yes.

4 Q. Do you know an individual named Mark Richardson?

5 A. Yes, I do.

6 Q. Do you see him in the courtroom today?

7 A. Yes.

8 Q. Would you please point to him, indicate for the  
9 record, what he's wearing today?

10 A. Mr. Richardson's wearing a black sweatsuit, black  
11 shoes.

12 MR. BOGDANOS: Indicating the defendant for the  
13 record.

14 THE COURT: Yes.

15 BY MR. BOGDANOS:

16 Q. Detective, without going into any details, were you  
17 with Detective Dimuro on February 5th when he interviewed Mr.  
18 Richardson?

19 A. Yes.

20 Q. And, I'm sorry, February 5th of 2008, for the record?

21 A. Yes.

22 Q. And were you also with him when you dropped Mr.  
23 Richardson home in Queens after the interview was over?

24 A. Yes. We drove him home to Astoria.

25 Q. Did you have occasion the following day to meet an

Glenn J. Merola, Sr. Court Reporter

DIRECDT/DET.TORRES/PEOPLE

1 individual named Erica Grazzet?

2 A. Yes.

3 Q. Where was that?

4 A. The Parks Department, the pot program, which is  
5 located in Flushing Meadows Park.

6 Q. In Queens?

7 A. In Queens.

8 Q. Did you go there in person?

9 A. Yes. Detective Dimuro and myself.

10 Q. And did you have occasion to meet Ms. Grazzet?

11 A. We did, yes.

12 Q. And did you ask her for any information?

13 A. Yes. I asked her to verify that Mark Richardson had  
14 worked there and the days that he was at work. Basically  
15 looking for his time records.

16 Q. And do you remember the specific days you were asking  
17 about?

18 A. I believe it was February 10th -- January 10th and  
19 11th of 2008.

20 Q. And did Ms. Grazzet have the information at hand or  
21 did she need to get it for you?

22 A. No, she didn't have access to it. She had to reach  
23 out to another employee who wasn't available and she had said  
24 she would contact me when she got it and would get it to us.

25 Q. Did you give her any means of contacting you?

Glenn J. Merola, Sr. Court Reporter

DIRECDT/DET.TORRES/PEOPLE

1           A.    I gave her my business card with my cell phone  
2   number.

3           Q.    And moving, just for a moment, to the next day, the  
4   7th, did she in fact fax you the material that you asked for?

5           A.    The next day she called me and left a message on my  
6   phone. I was off that day. We were both off, Gerry and I.  
7   And I returned her call later in the morning.

8           Q.    And then, ultimately, she faxed you the material?

9           A.    She said she had the paperwork and she would fax it  
10   to my office and I told somebody in my office to get it, to  
11   leave it on my desk until I came back.

12          Q.    And when you came back on duty you found it?

13          A.    Yes.

14          Q.    So now let's go back to the 6th if we can. After you  
15   gave your card and cell phone number to Ms. Grazzet, did you  
16   receive a phone call later that same day?

17          A.    Yes, I did.

18          Q.    Do you remember approximately what time you received  
19   that phone call?

20          A.    I believe it was some time after 8 p.m.

21          Q.    And just, did you, over the course of the next month  
22   receive several phone calls?

23          A.    Yes.

24          Q.    And as you received the phone calls did you take any  
25   steps to memorialize what was said on the telephone calls?

DIRECDT/DET.TORRES/PEOPLE

1           A.    Yes.  I typed a DD5 which is a police information  
2 sheet.

3           Q.    And you typed that while the events were fresh in  
4 your mind?

5           A.    Yes.

6           Q.    Indeed on one of those calls when did you start  
7 typing?

8           A.    When?

9           Q.    You started typing during one of the calls?

10          A.    No, I was at my desk.

11          Q.    Did you type the notes while the events were still  
12 fresh in your mind?

13          A.    Yes.

14          Q.    And do you have those notes with you?

15          A.    I do.

16          Q.    Please don't refer to them unless you need to.  If  
17 there is any portion of any of the phone calls you can't  
18 remember and you need to look at your typed notes to remember,  
19 please ask the Court's permission to do so, okay?

20          A.    Okay.

21          Q.    All right.  So that first phone call you said  
22 slightly after 8 o'clock p.m.?

23          A.    Yes.

24          Q.    Who was that from?

25          A.    It was from Mark Richardson and it was on my cell

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DIRECDT/DET.TORRES/PEOPLE

1 phone.

2 Q. How do you know it was Mark Richardson?

3 A. He said it was Mark Richardson.

4 Q. And in addition to that did you recognize his voice  
5 from the previous day?

6 A. Yes.

7 Q. And when you received that call what was your first  
8 reaction?

9 A. I was surprised. Where did you get my cell phone  
10 number from?

11 Q. And can you now walk us through that conversation as  
12 best you can. We get it, three and half years later, but as  
13 best you can, give us your words, his words, your words, his  
14 words.

15 A. Began with him asking, or I asked him, where did you  
16 get my cell phone number from? He said Ms. Grazzet gave it to  
17 him. And he wanted to know why Detective Dimuro and I had made  
18 a visit to Ms. Grazzet, as well as his brother Derek, why did  
19 we go there, why.

20 And I informed him that it was common practice, we  
21 already spoke with him, and we're following up on what he had  
22 told us where he was this day and that day. And that was  
23 basically the conversation there that day.

24 Q. And did you ask him anything about -- withdrawn. So  
25 you explained to him that's pretty much standard police

DIRECDT/DET.TORRES/PEOPLE

1 procedure?

2 A. Right.

3 Q. For everybody not just him?

4 A. Right.

5 Q. And did you ask him while you were on the phone with  
6 him on that first conversation whether he had used Helen  
7 Abbott's phone?

8 A. I did.

9 Q. Just tell us that?

10 A. I had asked him, did you use Helen Abbott's phone to  
11 call your brother Derek Richardson. And he said he didn't even  
12 know that lady had a phone. Meaning Ms. Helen Abbott. And  
13 that his brother should have told me about Desiree. He kept  
14 talking about Desiree. I said, no, your brother never  
15 mentioned a Desiree at all.

16 Q. So at any point during that conversation did he ever  
17 withdraw that statement, the statement you just gave us, that  
18 he didn't even know that lady had a phone?

19 A. No.

20 Q. During that conversation did you also ask him about  
21 leaving the building on the Friday, January 11th?

22 A. I asked him if he recalled that day leaving the  
23 building, did he see any police officers in the building at the  
24 time he was leaving, and he had said, yes, he did, had seen  
25 uniformed officers coming into the building.

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1 Q. And, finally, on that phone call, did you ask him  
2 anything about whether or not he had been carrying anything in  
3 his hand when he left?

4 A. Yes. I asked him if I was carrying anything. He  
5 said he had a bag with his uniform in it, carrying his uniform.

6 Q. This is simple possible question, can you give us a  
7 rough idea how long this phone call lasted?

8 A. It was pretty brief. I don't know, fifteen minutes.

9 Q. And did you then have -- did you then receive another  
10 phone call?

11 A. Yes.

12 Q. From Mr. Richardson?

13 A. Yes.

14 Q. Do you remember when that was?

15 A. That was on the 18th just before 4 p.m. because I was  
16 getting ready to go home.

17 Q. And 18th of what month?

18 A. February.

19 Q. Again, of 2008?

20 A. 2008.

21 Q. And tell us exactly what happened then, please,  
22 again, as best you can recall?

23 A. It was again on my cell phone that I received a  
24 call. Mr. Richardson wanted to know why Detective Dimuro was  
25 harassing his family. I said what are you talking about? He

DIRECDT/DET.TORRES/PEOPLE

1 said, why are you going to my father's house? Why are you  
2 harassing my daughter? You are going to all my family.

3 I said, Mark, explain to me how all of these phone  
4 numbers are coming back to your relatives? We don't know who  
5 these people are. We knew that Derek had the same name,  
6 Richardson, but the others people didn't have a common name. A  
7 name in common with him.

8 He kept saying I told you about Desiree. I told  
9 you -- and I said, what are you saying, that she made these  
10 phone calls? He's saying I'm not saying that. Umm, whatever  
11 whatever, he was pretty upset that day.

12 Q. Okay. And did -- when he said Desiree, did you  
13 understand whom he was talking about?

14 A. Desiree Allen, yes.

15 Q. At that point his girlfriend for a period of time?

16 A. She was a girlfriend for a period of time. I think  
17 she was also a co-worker for awhile.

18 Q. And did you explain to him why you were going to each  
19 of these people?

20 A. Yes.

21 Q. And what was his reaction when you told him you are  
22 just going to all the phone numbers that were dialed?

23 A. He just didn't understand. He kept saying, you know,  
24 well, why are you going -- I said, well, because their phones  
25 are being called from this dead woman Ms. Abbott's phone.

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DIRECDT/DET.TORRES/PEOPLE

1 Who's calling them from her phone? And he just didn't -- he  
2 just kept saying I told you about Desiree. I am being  
3 harassed.

4 Q. And did you specifically ask him if he was saying  
5 that Desiree made these phone calls?

6 A. I did.

7 Q. And what did he say?

8 A. He didn't answer yes or no. He just kept saying, you  
9 know, Desiree. He said he lived with her for a while, she was  
10 like a girlfriend, and she had made calls t o his house  
11 before. And I said, well, does she have -- how does she have  
12 your phone numbers to call your house and your family? Does  
13 she know your family?

14 Q. Did he answer that?

15 A. Yes. He just kept saying, you know, I told you about  
16 Desiree. He wouldn't give a clear answer as to why Desiree  
17 would be calling his family or how she would have numbers.

18 Q. Or how she would have access to Ms. Abbott's phone?

19 A. Right.

20 Q. And, again, about how long did this particular call  
21 last?

22 A. This call lasted a good forty minutes, about 40, 50  
23 minutes.

24 Q. Are you sure about that?

25 A. It was after -- I know it was after four and I was

DIRECDT/DET.TORRES/PEOPLE

1 looking to go home.

2 Q. I have the virtue of having your notes in front of  
3 my. You what to take a look at your notes from this second  
4 call.

5 A. 16:40. I get off duty four o'clock.

6 Q. Go to paragraph two.

7 A. I'm sorry. It says the call lasted 7 minutes 58  
8 seconds when I informed him I was going off duty.

9 Q. Does the sound right now? Again, we understand it's  
10 three and a half years later.

11 A. I mean he called at 16:40. I thought I was going off  
12 duty at 16. It could have been I was still there later.

13 Q. Did you then receive a third phone call from Mr.  
14 Richardson?

15 A. Yes.

16 Q. When was that?

17 A. That was in March.

18 Q. Do you remember the exact date?

19 A. March 11th, I believe, 2008.

20 Q. Do you remember roughly what time that was?

21 A. I have to refer to my notes.

22 MR. BOGDANOS: Sure. If it's okay with the  
23 Court.

24 THE COURT: Yes.

25 A. That was at 23:00 hours, 11 p.m..

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DIRECDT/DET.TORRES/PEOPLE

1 Q. And where did you get that phone call?

2 A. That call came to my office on the land line the  
3 Homicide Squad phone.

4 Q. Do you have any idea how Mr. Richardson got your  
5 direct -- the direct number to the Homicide Squad?

6 A. Probably from Ms. Grazzetti who gave him my cell phone  
7 number as well.

8 Q. Would that number also have been on your card?

9 A. Yes.

10 Q. So, again, as best you can recreate that phone call  
11 for us, this is your third one so, please, just tell us what  
12 you said, what he said?

13 A. Mr. Richardson was upset again, saying that his  
14 family was being harassed, we didn't have to go to his family.

15 I kept asking him: Explain to me how these phone  
16 calls are being made from this dead woman's phone to your  
17 family? We don't know it's your family members.

18 Again, he kept throwing Desiree's name there. He  
19 said my brother told you about Desiree. I said I never spoke  
20 to your brother about Desiree. My memory knocking on his  
21 brother door: Are you his brother? He said yes. Does he call  
22 you? He says he calls me everyday. Which brothers do. He  
23 never mentioned anybody named Desiree.

24 At one point he stated, you know, Desiree, she's out  
25 to get me, you know, she called my wife, she called my house,

DIRECDT/DET.TORRES/PEOPLE

1 she told my wife that I'm her man, she's sucking my dick.

2 And he kept rambling on about Desiree. I said, Mark,  
3 explain how these people are being called from this dead ladies  
4 phone? He said his family wanted to know the same thing. They  
5 wanted to see the phone records, like who's this dead ladies  
6 phone calling their house. I said they can get their own  
7 records.

8 Q. And did anything about an individual named Roxsy  
9 Roxsy come up in that conversation?

10 A. Roxsy is Mr. Richardson's wife and he wanted to know  
11 why Detective Dimuro had called her. And, again, that was the  
12 same thing because this phone was used to call her job.

13 MR. BOGDANOS: Just bear with me one minute,  
14 your Honor, please.

15 BY MR. BOGDANOS:

16 Q. And for all of these visits to various family  
17 members, were each and everyone of them as a result of tracking  
18 down a telephone number on Helen Abbott's phone?

19 A. Yes.

20 Q. Was there any conversation between you and Mr.  
21 Richardson during this third telephone call about the phone  
22 itself, the physical phone?

23 A. Yes.

24 Q. Explain.

25 A. I had asked him, explain to me how the phone is being

DIRECDT/DET.TORRES/PEOPLE

1 used to call members of your family if you don't even know she  
2 has had a phone. And he said, well, you got the phone why  
3 can't you get the fingerprints off of it. I said, well, Mark,  
4 you know that we don't have the phone.

5 Q. And did he reply to that?

6 A. He just changed the subject and went back to Desiree  
7 calling his house.

8 Q. And was there any conversation about him having been  
9 at work that day, the day of the 11th?

10 A. On that conversation?

11 Q. On that conversation. And if you need to look at  
12 your notes, again, I have the virtue of having them right in  
13 front of me.

14 THE WITNESS: May I?

15 THE COURT: You may look at them.

16 A. Yes.

17 Q. Okay. Explain.

18 A. He had said, I told you I was at work that day, Ms.  
19 Grazzet wrote me a letter. And I explained to him that letter  
20 doesn't say you were at work. It says to whom it may concern  
21 Mr. Richardson asked me to write this letter saying he was at  
22 work. There was no verification that the letter confirmed he  
23 was working.

24 Q. And, in fact, during that conversation did Mr.  
25 Richardson actually say to you, you got proof that I was at

DIRECDT/DET.TORRES/PEOPLE

1 work?

2 A. Yes.

3 Q. Did you have proof that he was at work?

4 A. No.

5 Q. And did he then, when you -- did you confront him  
6 with the fact that you did not believe he was at work on that  
7 date?

8 A. I don't recall.

9 Q. You want to look again?

10 MR. BOGDANOS: If it's okay with the Court.

11 THE COURT: Yes?

12 A. I said the letter doesn't prove that you were at  
13 work, Mark, it doesn't say anything, it says that you wanted  
14 people to say that you were at work.

15 Q. And how did that conversation end, that third one?

16 A. It just ended. It just ended. It was like I had  
17 enough, you know, you can't explain why the calls are being  
18 made to your family.

19 MR. BOGDANOS: Thank you. I have nothing  
20 further. Oh, I'm sorry. I do. I do.

21 BY MR. BOGDANOS:

22 Q. The building 2400 Second Avenue, you been to that  
23 building?

24 A. Yes.

25 Q. More than once?

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DIRECDT/DET.TORRES/PEOPLE

1 A. Quite often.

2 Q. Familiar with the Wagner Houses?

3 A. Yes.

4 Q. And was there -- did you have occasion to go up to  
5 the Wagner Houses at 2400 building and, particularly, go to the  
6 two elevators A and B?

7 A. Yes.

8 Q. And the jurors already seen plenty of video footage  
9 of the elevators. One elevator has a door that opens out?

10 A. Yes.

11 Q. One elevator has a sliding door?

12 A. Yes.

13 Q. Were you asked to go up and take a photograph of the  
14 elevator panel of the elevator with the sliding door?

15 A. Yes. I used my I-phone, took a photo.

16 MR. BOGDANOS: I would ask that the witness now  
17 be handed what is previously been marked People's 100 for  
18 identification. For the record, photograph of an elevator  
19 panel. Previously shown to the defense.

20 BY MR. BOGDANOS:

21 Q. Do you recognize that photograph?

22 A. Yes.

23 Q. And, in particular, do you recognize what's depicted  
24 in that photograph?

25 A. Yes. It's the elevator panel, 16 floors, with the

DIRECDT/DET.TORRES/PEOPLE

1 push buttons, And it was elevator B.

2 Q. And is the panel in A and B, are the buttons  
3 configured in exactly the same way in A and B?

4 A. Yes. The only difference the way the door opens.

5 Q. And is that a fair and accurate photograph of how the  
6 elevator panel appeared in January of 2008?

7 A. I wasn't at the scene that day but it should be  
8 pretty much the same.

9 Q. Let me do it a different way. I'm sorry. I am not  
10 asking --

11 MR. KLEIN: We have no problem with it being  
12 admitted.

13 MR. BOGDANOS: Okay, fine. Thank you. Offered.

14 THE COURT: People's 100 is admitted.

15 MR. BOGDANOS: Thank you. Now I have nothing  
16 further.

17 THE COURT: Mr. Klein.

18 (People's Exhibit 100 was received in evidence.)

19 CROSS EXAMINATION

20 BY MR. KLEIN:

21 Q. Detective, going to the March 11th phone call, you  
22 explained to the jury about DD5s, what they were. Those are  
23 where you put in the information about the phone call itself,  
24 right?

25 A. Yes.

Glenn J. Merola, Sr. Court Reporter



CROSS/DET.TORRES/DEFENSE

1 Q. Those are what's called detective follow-up reports?

2 A. Right.

3 Q. Would it be accurate to say that the phone  
4 conversations that you got on the 11th is on the 11th but the  
5 5, the DD5 you write, actually write on the 12th? If you want  
6 to look that's okay.

7 A. Yes.

8 Q. Okay. But would it be accurate to say that you also  
9 actually make some other notes about the contents of the phone  
10 conversation that you have on the 11th?

11 A. I actually didn't make notes. I mean the phone call  
12 came in at 23:00, 11 p.m., so when I type it the computer is  
13 set at as soon as you go after midnight it's going to go into  
14 the next date. I just typed it from my memory from my  
15 conversation with him.

16 Q. I am going to show you what I'd ask be deemed marked  
17 Defense Exhibit C. Just could you take a look at those couple  
18 of pages.

19 A. Yes. These are my -- I guess you would call this my  
20 time line.

21 Q. Okay. Now, some of it actually has notes about the  
22 conversation on 3/11, is that right?

23 A. Right.

24 Q. I think the way it goes you have to give it back and  
25 then I will ask you. But those are some notes you made so

CROSS/DET.TORRES/DEFENSE

1 would it be accurate to say that Mark said the following to you  
2 during that conversation: I am tired of Officer Dimuro  
3 harassing my family. He called my wife at my job tonight the  
4 bullshit is getting thick. I came in willingly to speak. I  
5 didn't have to. Then he said -- words to that effect, right?

6 A. Yes.

7 Q. And he also said to you, you said he was with someone  
8 called Whitey and Anthony, and that Dimuro had said that he,  
9 Mark, was the first one being interviewed, that neither Whitey  
10 or Anthony had been spoken to but that he knew that that wasn't  
11 true, that he had figured that out from something Dimuro said?

12 A. That's what he said, yes.

13 Q. Okay. And would it also be accurate to say that some  
14 point during the conversation he asked you what day was that  
15 lady killed?

16 A. Yes.

17 Q. And you told him, you said the day the calls were  
18 made from your house to your family, the day you said you were  
19 in her apartment, that's the day she was killed?

20 A. Yes.

21 MR. KLEIN: Okay. Thank you very much  
22 detective.

23 MR. BOGDANOS: Nothing.

24 THE COURT: Nothing further. All right,  
25 Detective, thank you very much.

DIRECT/DET.HENRIQUEZ/PEOPLE

1 (The witness was excused and exits the courtroom.)

2 MR. BOGDANOS: The People next call to the stand  
3 Detective Ruben Henriquez.

4 (The witness, Det. Ruben Henriquez, enters the  
5 courtroom, takes the witness stand, is duly  
6 sworn/affirmed in by the Clerk of the Court, responds to  
7 the oath and testifies as follows:)

8 THE COURT CLERK: Do you solemnly swear or  
9 affirm the testimony you are about to give shall be the  
10 truth, the whole truth, and nothing but the truth, so  
11 help you God?

12 THE WITNESS: Yes ma'am.

13 THE COURT OFFICER: Have a seat, please. Pull  
14 your chair up to the mic. And in a loud clear voice, if  
15 you could, state your name, spell your last name, give  
16 your shield number and present assignment.

17 THE WITNESS: Sure. My name is Ruben  
18 Henriquez. My last name, H-e-n-r-i-q-u-e-z. My shield  
19 is 2495. I work out of the 25th Precinct, Manhattan, New  
20 York.

21 MR. BOGDANOS: May I inquire, Your Honor?

22 THE COURT: Yes.

23 MR. BOGDANOS: Thank you.

24 DIRECT EXAMINATION

25 BY MR. BOGDANOS:

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DIRECT/DET.HENRIQUEZ/PEOPLE

1 Q. Detective, would you tell us, please, how long you  
2 have been on the New York City Police Department and how long  
3 you have been a detective?

4 A. Sure. I was hired in June, 1992, and I went to the  
5 25th Precinct right out of the police academy, which is January  
6 of '93. And I worked in the 25th Precinct so far my whole  
7 career and 2002 is when I went up to the detective squad within  
8 the same command.

9 Q. Until then you were uniformed police officer in the  
10 25th Precinct?

11 A. Yes.

12 Q. And now you are a detective in the 25th Precinct?

13 A. Correct.

14 Q. Where is the 25th Precinct house located, please?

15 A. It's located on East 119th Street between Park and  
16 Lexington Avenue.

17 Q. And what's the area that it covers?

18 A. It covers 115th Street to 142nd Street, Fifth Avenue,  
19 Paladino, and underneath the Triborough Bridge.

20 Q. And are you familiar with the Wagner Houses?

21 A. Yes.

22 Q. Are the Wagner Houses within the area of the 25th  
23 Precinct?

24 A. Yes.

25 Q. Is it fair to say that over the course of your career

DIRECT/DET.HENRIQUEZ/PEOPLE

1 you responded to the Wagner Houses many times?

2 A. Correct.

3 Q. And specifically the 2400 building of Second Avenue?

4 A. Correct.

5 Q. I invite your attention now to January 13th of 2008,  
6 were you on duty?

7 A. Yes, I was.

8 Q. And did you receive an assignment of relevance to  
9 this case and this jury?

10 A. Yes.

11 Q. And that was?

12 A. I was told to respond to 2400 to apartment 12E and  
13 there was a suspicious DOA.

14 Q. And did you do that?

15 A. Yes, I did.

16 Q. Do you remember roughly what time you arrived?

17 A. It was I'd say a little before -- a little after 4  
18 o'clock, 4 p.m.

19 Q. And were you -- did you -- were you assigned a  
20 detective from the North Homicide Squad to assist you?

21 A. Yes.

22 Q. Standard procedure?

23 A. Correct.

24 Q. And who was that person?

25 A. Gerald Dimuro.

DIRECT/DET.HENRIQUEZ/PEOPLE

1 Q. And after you arrived at 2400 what apartment did you  
2 go to?

3 A. I went to apartment 12E.

4 Q. And after you arrived, very briefly, tell us what you  
5 did in the apartment?

6 A. Okay. When I arrived at the apartment I walked in, I  
7 took a look around, things in the apartment. We were escorted  
8 back to one of the furthest rooms in the apartment where  
9 happened to see a person horrifically murdered on the floor.

10 Q. And can you tell us the person's name, please?

11 A. Helen Abbott.

12 Q. And the juries already seen photos so we don't need  
13 to describe that at all. Did there come a time when the crime  
14 scene detective arrived?

15 A. Yes.

16 Q. And what, if anything, did you do with regard to the  
17 crime scene detective?

18 A. I stood there at the scene when they arrived and they  
19 processed the location.

20 Q. And did you point out areas to the detective that you  
21 might want processed for evidence?

22 A. Yes.

23 Q. The building itself, 2400, do you know how many  
24 floors it has?

25 A. The building has 16 floors.

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DIRECT/DET.HENRIQUEZ/PEOPLE

1 Q. Are there any fire escapes?

2 A. No, there are not.

3 Q. Are you familiar with any video in the building?

4 A. Yes.

5 Q. Describe that very briefly for us?

6 A. The video, the entire Wagner Housing Development is  
7 run by a police video surveillance unit called VIPER 12 and  
8 there are cameras in the building and on the outside of the  
9 building also.

10 Q. Have you had occasion to actually look at each of the  
11 cameras in the first floor and in the elevators of 2400?

12 A. Yes.

13 Q. Is there anyway possible to get in or out of that  
14 building without being viewed on camera?

15 A. There's no way to get in and out without being viewed  
16 on camera.

17 Q. After a crime scene arrived -- withdrawn. And all  
18 the evidence was packaged whatever happened we already heard  
19 about it so we're going to skip that. Do you start watching  
20 video?

21 A. Yes.

22 Q. Is there anything about the video that catches your  
23 attention early on?

24 A. Yes.

25 Q. What is that?

DIRECT/DET.HENRIQUEZ/PEOPLE

1 A. On the video I see what appears to be a large male  
2 wearing a green army jacket entering, exiting the building.

3 Q. More than ones?

4 A. More than once, yes.

5 Q. And did you later learn the identify of that  
6 individual?

7 A. Yes.

8 Q. And his name, please?

9 A. Mark Richardson.

10 Q. And did you see him on the video in the presence of  
11 any other individuals at any point?

12 A. Yes.

13 Q. Who in particular?

14 A. Anthony Hall.

15 Q. And you had occasion to me an interview Anthony Hall  
16 since then?

17 A. Yes.

18 Q. Do you see Mark Richardson in the courtroom today?

19 A. Yes.

20 Q. Would you please point to him and indicate for the  
21 record what he's wearing today?

22 A. He's sitting right next to Tom Klein, he's wearing a  
23 black sweatshirt.

24 MR. BOGDANOS: Indicating the defendant, Your  
25 Honor.

Glenn J. Merola, Sr. Court Reporter



DIRECT/DET.HENRIQUEZ/PEOPLE

1 THE COURT: Yes.

2 BY MR. BOGDANOS:

3 Q. And with regard to Mr. Richardson, were you present  
4 on July 10th of 2008, when he was arrested?

5 A. Yes.

6 Q. Moving forward, did you have occasion, specifically  
7 now I am going to ask you to direct your attention to October  
8 15th of the jury 2008. Do you remember that day generally?

9 A. Yes.

10 Q. On duty?

11 A. Yes.

12 Q. Did you see Mr. Richardson on that date, on October  
13 15th of 2008?

14 A. Yes.

15 MR. BOGDANOS: I would ask that the witness now  
16 be handed what has previously been received in evidence as 87.

17 BY MR. BOGDANOS:

18 Q. Please take a look at that and tell the jury if you  
19 recognize that item?

20 A. Yes. This is a print card. And I recognize this  
21 item because it's a major case print card and it has my writing  
22 on it, my signature, and the date.

23 Q. And whose print is that?

24 A. Mark Richardson's print.

25 Q. How do you know?

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DIRECT/DET.HENRIQUEZ/PEOPLE

1 A. Because I was there.

2 Q. Printed him?

3 A. Yes.

4 Q. On October 15th?

5 A. Yes. I was there when he was printed, yes.

6 Q. And what did you do with that card after you printed  
7 him?

8 A. We put it into the -- we safeguard it and it went  
9 into police custody.

10 Q. And did it also go to the Latent Print Unit at 1  
11 Police Plaza or police headquarters?

12 A. Yes, it did.

13 Q. If I can get that back. On the same date did you  
14 have additional contact with Mr. Richardson?

15 A. Yes.

16 MR. BOGDANOS: I am going to ask that this item  
17 be handed up. I would ask that the detective be handed  
18 People's 68 in evidence.

19 Q. Do you recognize that item?

20 A. Yes, I do.

21 Q. What do you recognize it to be?

22 A. It's a DNA buccal swab collection kit.

23 Q. And how do you recognize that?

24 A. I recognize it because my handwriting is on it. The  
25 seal has my initials on it and I recognize this to be my

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DIRECT/DET.HENRIQUEZ/PEOPLE

1 handwritting.

2 Q. The seals been broken so, go ahead, open the box up,  
3 please, and tell us if you recognize what's inside of it as  
4 well?

5 A. Yes, I do.

6 Q. What's inside it?

7 A. These are the actual swabs.

8 Q. Explain exactly how this came to be?

9 A. Okay. While he was at the -- while Mark Richardson  
10 was --

11 MR. KLEIN: Could I just -- I think you should  
12 lead.

13 MR. BOGDANOS: I will lead. I got ya.

14 BY MR. BOGDANOS:

15 Q. On October 15th you told us already that you got his  
16 palm print?

17 A. Correct.

18 Q. While he was with you did you also get a buccal swab?

19 A. Yes.

20 Q. Tell us what you did to Mr. Richardson?

21 A. All right. Well, I put on gloves and I unpackaged  
22 the swab and I handed the swab to Mr. Richardson. He swabbed  
23 himself numerous times on the inside of his mouth and then I  
24 held the container and put the buccal swab into the holding  
25 kit.

DIRECT/DET.HENRIQUEZ/PEOPLE

1 Q. And did you actually watch him swab himself inside  
2 his cheek?

3 A. Yes.

4 Q. Standard procedure?

5 A. Correct.

6 Q. And then you sealed it?

7 A. Yes.

8 Q. For follow on testing?

9 A. Correct.

10 MR. BOGDANOS: Thank you. Nothing further of  
11 the detective.

12 MR. KLEIN: No questions.

13 THE COURT: All right. That completes your  
14 testimony. Thank you very much.

15 (The witness was excused and exits the courtroom.)

16 (Bench conference was held off the record with the  
17 Court and counsel.)

18 (Bench conference concluded, back in open court.)

19 THE COURT: We were just discussing scheduling,  
20 ladies and gentlemen, that detective will be the last witness  
21 for today. So we're going to call it a day. Good news is I do  
22 believe that both sides will be resting tomorrow. And, in  
23 fact, it might even be a shorter than usual day. The reasons I  
24 will explain in greater detail tomorrow.

25 We still are going to schedule deliberations,

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DIRECT/DET.HENRIQUEZ/PEOPLE

1 summations and charge and deliberations for Monday of next  
2 week. Which was the original target date.

3 So, that's it, we'll see you tomorrow morning 10  
4 o'clock, please. And if you wish to make some sort of plans on  
5 Friday you may do so, we will not be in session on Friday.

6 All right, thank you very much. 10 a.m. tomorrow  
7 please do not discuss the case.

8 (The jury was excused and exits the courtroom.)

9 THE COURT: All right, that's it. Thank you  
10 all.

11 MR. KLEIN: Can we do one more thing, I'm sorry,  
12 can we stay on the record.

13 THE COURT: Yes. Mr. Klein.

14 MR. KLEIN: I keep forgetting, I had wanted to  
15 make a court exhibit of those four photographs of Detective  
16 Henriquez. Could we just -- I don't know who has them.

17 MR. BOGDANOS: I do. Sure.

18 MR. KLEIN: Is that okay if they are presented  
19 in evidence, Judge?

20 THE COURT: We will make them a court exhibit.

21 MR. KLEIN: Whenever we get them it doesn't  
22 matter.

23 MR. BOGDANOS: What I will do since it's  
24 polaroids I will have the photo unit take photographs of each  
25 of those and then place those in and I will bring them in the

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DIRECT/DET.HENRIQUEZ/PEOPLE

1 morning.

2 THE COURT: Very good.

3 MR. KLEIN: Thank you.

4 (Trial was adjourned to Thursday, September 22,  
5 2011.)

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Glenn J. Merola, Sr. Court Reporter

1 SUPREME COURT NEW YORK COUNTY  
 2 TRIAL TERM PART 45

3 -----X  
 4 THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT #  
 5 : 3534/08

6 AGAINST  
 7 MARK RICHARDSON  
 8 Defendant.

CHARGE  
 MURD 2

-----X TRIAL

111 Centre Street  
 New York, New York 10013  
 September 22, 2011

10 B E F O R E:

11 HONORABLE BRUCE ALLEN  
 12 JUSTICE OF THE SUPREME COURT

13  
 14 APPEARANCES: (Same as previously noted)

15 -----  
 16 THE COURT CLERK: Case on trial continued. The  
 17 People of the State of New York against Mark Richardson.  
 18 The defendant, his attorneys, and the assistant district  
 19 attorney are present. The jury is not present at this time.

20 THE COURT: Thank you, very much. Good morning  
 21 everyone. Mr. Bogdanos.

22 MR. BOGDANOS: Matthew Bogdanos for the People.  
 23 Good morning, your Honor. Your Honor, through one hundred  
 24 percent my incompetence, I neglected to ask Detective Dimuro  
 25 a couple of questions. It was on my notes. I didn't ask

1 him about where Anthony Hall is now; and whether  
2 Detective Dimuro has attempted to find him.

3 I have informed the Court and counsel beforehand  
4 and respectfully requesting permission to fix my screw up,  
5 and recall Detective Dimuro for that purpose. Mr. Klein has  
6 asked if I do so that I also ask if back in 2008,  
7 Detective Dimuro knew that Anthony -- Mark Richardson was on  
8 parole, yes. For a drug related offense, yes; and I am  
9 happy to ask that -- those questions as well.

10 THE COURT: Mr. Klein.

11 MR. KLEIN: Fine.

12 THE COURT: Thank you. Are both sides ready for  
13 the jury?

14 MR. KLEIN: Yes, your Honor.

15 THE COURT: May we have the jury, please.

16 MR. BOGDANOS: For the record, Judge, I will be  
17 resting immediately after I recall Detective Dimuro; and  
18 moving all the exhibits into Evidence with the exception of  
19 People's Exhibit 5 which was only ever marked for I.D. It  
20 was the command log from the Viper room and then one through  
21 a hundred -- with the exception of five will be moved in  
22 because I haven't moved the Viper video in either, which is  
23 four.

24 THE COURT OFFICER: Jury entering.

25 (Jury entered the courtroom.)



1 THE COURT CLERK: All right, will both sides  
2 stipulate that all jurors are present and properly seated?

3 MR. BOGDANOS: Yes.

4 MR. KLEIN: Yes.

5 THE COURT: Thank you, very much. Good morning,  
6 ladies and gentlemen. Mr. Bogdanos.

7 MR. BOGDANOS: Thank you. Your Honor, the People  
8 next call to the stand Mr. Michael Mannion of the District  
9 Attorney's Office.

10 THE COURT OFFICER: Witness entering.

11 (Witness entered the courtroom.)

12 M I C H A E L M A N N I O N , called as a witness by and on  
13 behalf of the People, having been first duly sworn and/or  
14 affirmed, testified as follows:

15 THE COURT OFFICER: I do, yes. If you could have  
16 a seat, please. Pull your chair up in a loud clear voice.  
17 State your name, spell your last name.

18 THE WITNESS: My name is Michael Mannion,  
19 M-A-N-N-I-O-N.

20 MR. BOGDANOS: May I inquire, your Honor?

21 THE COURT: You may.

22 DIRECT EXAMINATION

23 BY MR. BOGDANOS:

24 Q Good morning, Mr. Mannion.

25 A Good morning.

1       **Q**     Sir, will you tell us your occupation; then by whom you  
2 are employed.

3       **A**     I am the manager of the Visual Evidence Unit and  
4 employed by the New York County DA's Office.

5       **Q**     And how long have you been with the New York County  
6 District Attorney's Office?

7       **A**     Since 1979, 32 years.

8       **Q**     Doing the math for you. Thank you.

9               Mr. Mannion, what are your duties and responsibilities  
10 within the District Attorney's Office?

11       **A**     Well I manage three units, which is the video,  
12 photography, and engineering unit and as a manager I have the  
13 full complement of bureaucratic duties; but since I began there,  
14 I have been working with the video unit and daily performed the  
15 duties of a video technician.

16       **Q**     And have you testified previously in your capacity both  
17 within the video unit itself and then for your own duties and  
18 then as a supervisor?

19       **A**     Yes, I have.

20       **Q**     Approximately, how many times would you say you have  
21 done so?

22       **A**     Well over a hundred times.

23       **Q**     Did you receive a request of relevance to this case and  
24 to this jury?

25       **A**     I did.

1           **Q**     And did you have occasion -- withdrawn. And the  
2 request was?

3           **A**     The request was to make -- to make clips in a  
4 chronological fashion so that a bunch of -- well, so that a  
5 number of video files could be seen in a timeline.

6           **Q**     And in order to fulfill that did you have occasion to  
7 visit the Wagner houses?

8           **A**     I did.

9           **Q**     Would you explain for what purpose and very briefly  
10 what you did there?

11          **A**     I had access to the files that came originally from the  
12 Wagner houses. Those files didn't have an imprint on them of a  
13 date and time; so I returned to the Wagner houses to see if  
14 those files still existed on the DVR's or some kind of a server  
15 to see if I could export them again with that date and time.

16                 I was unable to do that. I also wanted to see the  
17 location. Take a look at the DVR's, the camera positions, that  
18 sort of stuff.

19          **Q**     And it's fair to say that when you went up to see if  
20 the original files from January of 2008 still existed, they did  
21 not?

22          **A**     They did not.

23          **Q**     But none -- but prior to that the files had been  
24 exported? Did I say the right verb?

25          **A**     That's correct.

1       **Q**     Exported an external hard drive?

2       **A**     That's correct.

3       **Q**     You had an opportunity -- withdrawn.

4             Were those files then downloaded in your unit?

5       **A**     Yes, they were. They were -- you are correct.

6       **Q**     You were going to give us a really long answer.

7       **A**     An explanation that was unnecessary. They were put on  
8 a network drive. They were put on a portable drive, and then  
9 put on a network drive and they were -- yes; essentially the  
10 short answer, yes.

11       **Q**     The movement of any of these files from Viper video DVR  
12 of 2400 Second Avenue to external hard drive to a network, to a  
13 local drive, do any of these movements in any, way, shape or  
14 form alter the files themselves?

15       **A**     No, they did not.

16       **Q**     Now, you mentioned that you went to the Wagner houses  
17 and this jury has already heard plenty of evidence about the  
18 thirteen different cameras, so we are not going to go into that;  
19 but the jury has also heard evidence that twelve of them were on  
20 one DVR, and one was on a separate DVR. Is that what you found  
21 with your files?

22       **A**     That's correct.

23       **Q**     And the jury has also heard evidence that one of the  
24 cameras appear to be approximately three minutes ahead. Can you  
25 explain that.

1       **A**     At Wagner houses they have -- they have a room where  
2 all of their DVR's are kept, and rather than there being some  
3 kind of network time that runs across all of the DVR's, each DVR  
4 has its own internal clock that is to be set manually; so it  
5 would be as if each of the jurors had a watch and you each set  
6 your watch for whatever time you thought it was. I am sure  
7 there would be at least a three to five minute variance.

8       **Q**     So what about all the cameras on a single DVR?

9       **A**     If they are on a single DVR the time will be universal  
10 across those cameras; but if there were -- if there was a single  
11 camera on another DVR because that time is set manually, there  
12 could be a difference there.

13       **Q**     And that's what you saw in this particular case?

14       **A**     That's correct.

15       **Q**     And the files themselves?

16               And if you could look to the monitor to your left and  
17 this monitor is actually it's one of yours, correct?

18       **A**     That's correct.

19       **Q**     As is the one right here is also one of yours?

20       **A**     That's correct.

21       **Q**     And the laptop is yours?

22       **A**     That's correct. Well, it belongs to the City of New  
23 York.

24       **Q**     We got it. Thank you very much for the use of it.  
25               And finally for our second one, the architecture, the

1 mapping, the files.

2 A File system.

3 Q I don't know what to call that. Those are the files  
4 you were talking about that you are looking at right now?

5 A That's correct.

6 Q And these are the files that are also unchanged from  
7 all the movement even into this courtroom?

8 A That's correct. Those are the folders. The files are  
9 within the folders.

10 Q Within the folders.

11 And is it fair to say that that's all you -- those were  
12 all the folders and files you have? You don't have anything  
13 more than the dates here, the 11th to the 13th of January of  
14 2008, with regard to this case?

15 A That's correct.

16 Q You don't have the 10th of January?

17 A I do not.

18 Q You don't have the 14th of January?

19 A I do not.

20 Q And when you went up there, they didn't exist?

21 A I did not -- I did not find them. They did not exist  
22 on their DVR's.

23 Q So these 13 separate cameras, the jury has already  
24 heard evidence that it covers roughly midnight Thursday the  
25 tenth into the morning of the eleventh up until roughly midnight

1 of Sunday the thirteenth across all three cameras, correct?

2 A That's correct.

3 Q That's what you found?

4 A That's correct.

5 Q Which means it's 72 hours. Did I do that right.

6 Seventy-two hours of video times thirteen cameras?

7 A That's correct.

8 Q So that the jury don't need to go through all of that

9 if they want, were you asked to make a smaller compilation?

10 A That's correct.

11 Q If you will from whatever 72 times 13 is?

12 A That's correct.

13 Q 936? Does that sound right? Don't answer that.

14 A You have done more math than I have.

15 Q Don't answer that. And did you have a timeline that

16 you used in order to make the smaller clip?

17 A I did.

18 MR. BOGDANOS: It should be 74A and B. May I ask

19 that the witness be handed what's previously been received

20 in Evidence as 74A and B and really just put them both on

21 the board and show them to him.

22 Q Mr. Mannion, I am going to ask you to take a look at

23 these two charts. The only question, you have seen these

24 before?

25 A I have.

1           **Q**    You saw it when it was --

2                   THE COURT:  It was upside down.

3           **Q**    You saw it when it was upside up?

4           **A**    It's fine.

5           **Q**    Are these charts that -- the timeline -- I will do that  
6 again.

7                   Do these charts represent the timeline that you used to  
8 create the smaller clip?

9           **A**    Yes, they do.

10          **Q**    And instead of being 936 hours -- is that what we  
11 agreed -- it's like 25 minutes?

12          **A**    It's like 25 minutes.

13          **Q**    Look to your left, do you see that clip that you  
14 have -- is clip the right word?

15          **A**    Yeah, we can use that.  Yes.

16          **Q**    Do you see the clip that you created?

17          **A**    Yes, I do.  I just entitled it timeline.

18          **Q**    That's there before you on the monitor?

19          **A**    That's correct.  It's the quick time movie versus the  
20 folders.

21          **Q**    And when you did that, did you do it fairly and  
22 accurately?

23          **A**    I did.

24          **Q**    How?

25          **A**    I -- each of the clips that are pointed out on the



1 Excel chart I took a look at that clip; went to the time and  
2 place indicated within that file; and basically I was cutting  
3 and pasting. I would mark in and out. Move it to my timeline.  
4 Go to the next clip and do it. I did everything chronologically  
5 based on the chart.

6 Q You did that fairly and accurately?

7 A I did.

8 MR. BOGDANOS: I will offer the timeline --  
9 actually, the entire hard drive into Evidence as People's 4  
10 unless the Court wants me to mark the timeline separately?  
11 Does Mr. Klein care?

12 MR. KLEIN: Could I ask a question.

13 THE COURT: Sure.

14 VOIR DIRE EXAMINATION

15 BY MR. KLEIN:

16 Q So we have this 25 minute clip right?

17 A That's correct.

18 Q You saw that some of the cameras actually focused on a  
19 certain area of the building, right?

20 A That's correct.

21 Q So, for example, if the jury wants to look at the front  
22 door, right, and look at the front door for any period of time,  
23 right like for a two hour, three hour period, the jury can still  
24 do that?

25 A They can do that. They wouldn't be looking at the

1 timeline clip. They would be looking at the clips within the  
2 folders marked front door outside, front door inside.

3 Q Those are actually still there and accessible?

4 A They are.

5 MR. KLEIN: Okay, no objection.

6 MR. BOGDANOS: So I will just mark the entire hard  
7 drive it's People's 4 and move the entire hard drive in  
8 Evidence, all 936 hours and 25 minutes.

9 THE COURT: Agreed. People's 4 is admitted.

10 DIRECT EXAMINATION CONT'D.:

11 Q Mr. Mannion, I am going to ask you to watch while we  
12 play it.

13 THE COURT: The 25 minutes?

14 MR. BOGDANOS: Yeah. You can hit play.

15 (Videotape commenced to play.)

16 MR. BOGDANOS: Pause. Pause. I am sorry, Judge.  
17 Can I -- since we have the copies again, can I publish the  
18 exact same copies we have been publishing to the jury in  
19 case they want to look down.

20 (Hanging.)

21 Q Mr. Mannion, I am sorry, so, the clips themselves they  
22 don't -- they just keep running? This is a continuous -- one  
23 continuous clip that you have edited that reflects the clips 1  
24 to 99 I think, right?

25 A That's correct. There is no -- they run right after

1 the other. There is no separation between them.

2 Q So other than the fact that the view will change, you  
3 know 1A will be from the outside, 1B will be from the inside.  
4 That will be the only indication we are on to a new original  
5 clip?

6 A That is correct.

7 Q Correct?

8 A That's correct.

9 Q Thank you.

10 MR. BOGDANOS: If we can hit play again, please.

11 I am sorry.

12 (Videotape commenced playing.)

13 MR. BOGDANOS: Your Honor, I am going to be asking  
14 Mr. Mannion a few questions.

15 THE COURT: You want to stop it.

16 MR. BOGDANOS: It could keep running. Could you  
17 hand Mr. Mannion a copy of the same timeline that we have.  
18 Pause.

19 (Videotape stopped playing.)

20 Q Mr. Mannion, for the record I paused it at the end of  
21 clip 29, still on 29, but it's going to be over in a few  
22 seconds. You have the copy of the timeline in front of you?

23 A I do.

24 Q What I am going to ask you to do now for the next 19 --  
25 actually twenty -- from 30 to 49 clips -- as we move through

1 those clips just give us the clip number; so just say 30, you  
2 know, clip 30, 31, 32, et cetera, as we go into it.

3 A Understood.

4 Q Thank you.

5 MR. BOGDANOS: May it, please.

6 (Videotape commenced playing.)

7 A This is clip 30. Clip 31. Clip 32. We are now  
8 watching clip 33. We are now watching clip 34. This is clip  
9 35. Clip 36 and clip 37. Now we are onto clip 38. Viewing  
10 clip 39. This is clip 40 and 41. Okay, this is now clip 42.  
11 This is clip 33 -- 43, excuse me. Forty-four (44). And now  
12 clip 45. Now this is clip 46. This is clip 47. This is clip  
13 48. Now clip 49.

14 MR. BOGDANOS: Pause.

15 (Videotape stopped playing.)

16 Q I just paused at clip 49. Now the next series of  
17 entries on the timeline 52, 70 that purports to be telephone  
18 calls? You have nothing to do with that, correct?

19 A Nothing whatsoever.

20 Q You pick up again at 71?

21 A That's correct.

22 Q And just so we are clear if the jury wants to look at  
23 any individual clip longer either before or after the file name  
24 is in the right-hand column?

25 A The file name is the far right-hand column. You will

1 see the camera No. which is 1A. Then you would see -- let's  
2 take a look at 71. It says camera 4, 457. Those will be  
3 included in file name and then within that 427 and 2147, one of  
4 those is linear time and the other would be actual time of day.  
5 When I say lineal time, I mean the time counter. Right now the  
6 linear time is 22. That would be the reference.

7       **Q** The jury heard plenty of evidence about how to find the  
8 clip. I just want to make sure if the jury wants, to understand  
9 if they want to see the longer clip, they could see it in more  
10 context? They could still go to the original file and find it?

11       **A** Absolutely.

12       **Q** Now, if we could pick up in a moment from 71 and if you  
13 would continue to the end to do exactly what you've been doing  
14 so far.

15                       (Videotape commenced playing.)

16       **A** Okay, we are now looking at clip 71. We are now  
17 viewing clip 72; and now 73 and clip 74. Now this is clip 92.  
18 There was no 75.

19                       MR. BOGDANOS: Pause.

20                       (Videotape stopped playing.)

21       **Q** Thank you for pointing it out. 75 is another phone  
22 call. You have nothing to do with it?

23       **A** No.

24                       MR. BOGDANOS: Thank you, please continue.

25                       (Videotape commenced playing.)

1           **A**     I believe I just said this is clip 92.

2           **Q**     And now clip 93. This is clip 94. Now viewing clip  
3 95. This is clip 96. Clip 97. This is now clip 98 and finally  
4 clip 99.

5                     (Videotape stopped playing.)

6           MR. BOGDANOS: Mr. Mannion, thank you very much.

7           I have nothing further, your Honor.

8           THE COURT: Mr. Klein.

9           MR. KLEIN: Just a couple of questions, Judge.

10 CROSS-EXAMINATION

11 BY MR. KLEIN:

12           **Q**     You indicated you actually went up to 2400 Second  
13 Avenue yourself, right?

14           **A**     That's correct.

15           **Q**     To see if you could get the original Viper video?

16           **A**     That's correct.

17           **Q**     Could you tell the jury when it was that you did that?  
18 Not exactly. Just the season of the year.

19           **A**     I believe it was the end of August. It was late  
20 August; late August early September or I think late August.

21           **Q**     Of which year?

22           **A**     This year.

23           **Q**     That's when you went to make the inquiry?

24           **A**     That's correct.

25           **Q**     You were informed then that January 10th no longer

1 | existed, right?

2 |       **A**     I actually had someone from the Viper Unit search their  
3 | files to see if it existed; so I saw for myself it didn't exist.

4 |       **Q**     It no longer existed?

5 |       **A**     That's right.

6 |       **Q**     Did you find out when it was that, that had been  
7 | destroyed?

8 |       **A**     I did not. Normally if it's stored in the DVR it is on  
9 | a cycling thing and whatever their schedule is -- if it is 60  
10 | days or 90 days, it is automatically rerecorded over so I have  
11 | no way of knowing whether it was separated other than the export  
12 | NYPD did that we have; or whether it was left in the DVR or  
13 | recorded over in its normal cycle; but I don't know specifically  
14 | when it was done.

15 |       **Q**     Do you know when specifically what cycle they were on?  
16 | A 60 or 90 days?

17 |       **A**     No, I don't.

18 |               MR. KLEIN: Thank you very much.

19 |               THE COURT: Mr. Bogdanos?

20 |               MR. BOGDANOS: Nothing.

21 |               THE COURT: Mr. Mannion, thank you.

22 |               THE WITNESS: Thank you.

23 |               (Witness exited the courtroom.)

24 |               MR. BOGDANOS: Your Honor, at this time as  
25 | indicated previously the People are respectfully requesting

1 permission to recall Detective Dimuro for a series of  
2 questions that I just forgot to ask.

3 MR. KLEIN: No objection.

4 THE COURT: Detective Dimuro, please.

5 (Witness entered the courtroom.)

6 THE COURT: Good morning, Detective Dimuro. You  
7 are still under oath.

8 THE WITNESS: Okay.

9 THE COURT: Mr. Bogdanos.

10 MR. BOGDANOS: May I inquire?

11 THE COURT: Yes.

12 REDIRECT EXAMINATION

13 BY MR. BOGDANOS CONT'D.:

14 Q Detective, I am sorry to recall it. It is totally my  
15 fault.

16 A Yeah, it's your fault.

17 Q You got it out. You are happy. I am sorry. I really  
18 do apologize.

19 Very briefly. When you testified yesterday you  
20 mentioned an individual named Anthony Hall?

21 A Yes, I did.

22 Q Do you know where Anthony Hall is now?

23 A No.

24 Q Any idea?

25 A No.



1           **Q**     Have you attempted to find him?

2           **A**     Yes, we have attempted on several occasions to try and  
3 track him down.

4           **Q**     Approximately, how many times have you been -- have you  
5 tried to find him?

6           **A**     Should I give specifics and location?

7           **Q**     Sure, but very generally just --

8           **A**     Okay. We tracked him down upstate and was successful  
9 and had him brought back into Manhattan; and since that time at  
10 the Manhattan location, I myself have gone at least ten times.

11          **Q**     And did you find him at all?

12          **A**     No.

13          **Q**     And, finally, going back to 2008, you know the  
14 defendant was on parole at that time?

15          **A**     Yes.

16          **Q**     And that was for a drug-related offense?

17          **A**     Yes.

18          **Q**     Thank you.

19                   MR. KLEIN: I don't have any further questions of  
20 the direct. Thank you very much for coming down today.

21                   THE WITNESS: Thank you. Bye.

22                   THE COURT: Thank you very much, detective. That  
23 completes your testimony.

24                   (Detective exited the courtroom.)

25                   THE COURT: You have a few exhibits outstanding?

1 MR. BOGDANOS: Yes, your Honor. We are  
2 currently -- not currently and it will be finally -- there  
3 are People Exhibit's 1 to 100 with the exception of  
4 People's 5 -- for the record a command log, which was just  
5 used to refresh an officer's recollection -- the People are  
6 respectfully offering all those exhibits into Evidence. I  
7 believe all of them are already in, but it is for the record  
8 making it clear it is one to four and six to one hundred.

9 THE COURT: Thank you very much. All are  
10 admitted.

11 MR. BOGDANOS: Judge, with that in the matter of  
12 the People of the State of New York against Mark Richardson,  
13 the People rest.

14 THE COURT: Mr. Klein?

15 MR. KLEIN: Defense rests.

16 THE COURT: Ladies and gentlemen, as you have just  
17 heard both sides have rested. And now you are all wondering  
18 what the schedule will be for the rest of the day. We have  
19 summations, charge, and deliberations coming up. Before we  
20 can do any of that; however, we have to go over some legal  
21 matters this -- this happens in everything case.

22 After conferring with counsel, I don't think there  
23 really is enough time today to get to the summations, and  
24 even if there were enough time, we wouldn't have enough time  
25 to get the case to you for deliberations. We have already

1 agreed to not be in session tomorrow. I know some of you  
2 have -- have plans for tomorrow; so after thinking it all  
3 over, I've decide the best way to proceed is to let you go  
4 at this point so you could have a rest; and then we will  
5 pick it up on Monday morning; and we will first thing on  
6 Monday morning, you will hear from the attorneys with their  
7 closing arguments or summations; and later on, on that same  
8 day on Monday, you will begin to deliberate on this case.

9 All right, is that clear to everyone? You are  
10 free to go at this point. Please do not discuss the case  
11 with anyone between now and Monday morning. I ask all of  
12 you to -- yes, we will pick all those up and please be here  
13 at 9:45. Obviously, it is going to be a very busy day.  
14 Please be prompt. If you are running late since some of you  
15 have already done, please give us a call so we know what's  
16 going on. All right, have a great weekend. See you on  
17 Monday.

18 (Jury exited the courtroom.)

19 (Transcript continued on the next page.)  
20  
21  
22  
23  
24  
25

## TOD/CHARGE CONFERENCE

1 T-2 - Peo. V Mark Richardson, Ind. #3534/08

2 September 22, 2011:

3 THE COURT: And at my request Mr. Klein you  
4 agreed to rest before actually making your 290.10 motion.

5 At the close of the People's case you may now make  
6 that motion as if you had not yet rested.

7 MR. KLEIN: Thank you. Yes. We are moving for  
8 a trial order of dismissal of all of the charges on the ground  
9 that the People have not made a prima facie case as to the  
10 elements of the crime nor as to the identity of the individuals  
11 who committed the crime, especially as to Mark Richardson.

12 In addition, were specifically asking that the Court  
13 dismiss the charge of Sexual Abuse in the First Degree and the  
14 felony murder charge related that, as there was no prima facie  
15 case presented as to that charge, either of those charges,  
16 against Mr. Richardson.

17 THE COURT: Thank you. Mr. Bogdanos.

18 MR. BOGDANOS: Considering the light in which  
19 the Court must consider the motion at this point, the People  
20 respectfully request, that the Court deny the defense motion.

21 And, specifically, with regard to Sexual Abuse, the  
22 saliva or sweat of the defendant is on the victim's left  
23 breast, it's an intimate part of her body, it constitutes  
24 sexual contact, which constitutes sexual abuse, which forms a  
25 basis for sexual contact, which forms a basis for sexual abuse,

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1 which forms a basis for felony murder.

2 THE COURT: Yes, the motion is denied.

3 There is legally sufficient evidence as the term is  
4 defined. And I take it you now renew the motion at the close  
5 of all the evidence Mr. Klein?

6 MR. KLEIN: Yes.

7 THE COURT: Anything further Mr. Bogdanos?

8 MR. BOGDANOS: No.

9 THE COURT: And that one is denied as well.  
10 Meaning that the case will go to the jury.

11 Now, why don't you both step up for a moment and  
12 we'll that talk about the charge or anything else.

13 (Bench conference was held off the record with the  
14 Court and counsel.)

15 (Bench conference concluded, back in open court.)

16 THE COURT: All right, we will pick things up at  
17 2:30. The record should reflect we had a discussion at the  
18 bench concerning certain charges, issues, and, hopefully, we'll  
19 be able to resolve those issues at 2:30.

20 (The trial was adjourned to 2:30 p.m.)

21 A F T E R N O O N S E S S I O N

22 THE COURT CLERK: Case on trial continued. The  
23 People of the State of New York against Mark Richardson. The  
24 defendant, his attorneys, the assistant district attorney are  
25 present. The jury not present at this time.

Glenn J. Merola, Sr. Court Reporter

TOD/CHARGE CONFERENCE

1 THE COURT: Thank you. Are both sides ready to  
2 make formal charge requests?

3 MR. BOGDANOS: Yes, Your Honor.

4 MR. KLEIN: Yes.

5 THE COURT: You are on your feet Mr. Klein so  
6 you can go first.

7 MR. KLEIN: Yes. Judge, I wondered how much of  
8 a discussion the Court wanted about the affirmative defense. I  
9 am prepared to discuss it.

10 MR. BOGDANOS: None. Not necessary.

11 MR. KLEIN: Okay. So I assume that's going to  
12 be charged?

13 THE COURT: Yes. We discussed it informally and  
14 I will charge it.

15 MR. KLEIN: I think the more serious concern is  
16 to whether or not the defendant is entitled to a Robbery in the  
17 Third Degree. Given there is a section in which the defendant  
18 states, basically, the following:

19 MR. BOGDANOS: Forgive me. Just one second.  
20 Just so I understand the argument. Is this under each of the  
21 robbery counts individually?

22 MR. KLEIN: Yes.

23 MR. BOGDANOS: Okay. That's it. Thank you.

24 MR. KLEIN: I am basically using the district  
25 attorney's video transcript that he gave us and on Page 6, the

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1 defendant saying: "So I'm not saying I'm better than nobody,  
2 but this house is a little crazy."

3 And he's like -- he's obviously talking about  
4 Anthony: "Yo, I'm gonna get your money, hold on, hold on, she  
5 got your money. So I'm looking, they still beefing. He  
6 grabbed her puts her up on the thing, yo, give me my, I pushed  
7 them apart."

8 ADA: "On what thing?" "On the refrigerator. I  
9 pushed them apart. Then he's saying, no, she got your money,  
10 she got your money. She says, I don't know what you call this  
11 nigger in here for. I don't know what you call this big nigger  
12 in here for, I ain't giving him shit.

13 So I'm looking I say, look, Miss, I don't know what's  
14 going on with you and him, but the money you owe him goes to  
15 me. Well, I ain't giving you shit, da, da, da. So I looked, I  
16 seen the money in her blouse. I took my money.

17 She grabbed up on me, and I like pushed her away from  
18 me, and I went out the -- the umm -- the entrance to go out the  
19 door. She was pulling on my shirt, the guy Johnny grabs her by  
20 the neck. Anthony runs in the kitchen and comes out -- excuse  
21 me -- Anthony runs in the kitchen comes back out the kitchen, I  
22 didn't know what he had in his hand, so as I'm going to the  
23 door I thought he punched her in her stomach."

24 And then it goes on from there. And I think there's  
25 a fair reading of that statement that gives us a reasonable

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1 view of the evidence looked at, obviously, in the light most  
2 favorable to the defendant, that what the defendant did there  
3 was Robbery in the Third Degree.

4 Now, I am well aware of the line of cases, and Mr.  
5 Bogdanos gave me one of these cases, People v Negrón, that  
6 talks about the Scarborough line of cases, that indicate that  
7 if a defendant makes, or anyone makes a statement, if a witness  
8 makes a statement, and there's no reason to attack a part of a  
9 statement, say that's not true, but that part is true, there's  
10 no reason to do that, then you can't craft like a lesser  
11 included out of an integrated statement by saying, believe that  
12 part, believe that part, if there is no rational basis to say  
13 that.

14 But that's not what I'm am saying here. I am instead  
15 saying, that if you believe all of that statement, credit all  
16 of that statement, there is a logical, reasonable argument,  
17 that what the defendant did was a Robbery in the Third Degree  
18 of his own regardless of what the other individuals were  
19 doing.

20 The Court wondered about situations where like if  
21 everyone is involved in an assault can someone come up and  
22 commit a robbery. And, actually, there are cases like that.  
23 There are a line of cases in the First Department. The main  
24 case was People v Morales. It's a 1987 case.

25 And what happened in that case is, there was a group



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1 of people who were assaulting someone and someone came up and  
2 then in the middle of it engaged in a robbery. And the  
3 question was, did that kind of prove that the other  
4 individuals, who had simply done the assault, were part of the  
5 robbery? Or, did they not have to show that they all shared an  
6 intent to steal? And even if it all happened at the same time,  
7 that someone could do an assault -- some people could do an  
8 assault and some people could do a robbery in the exact same  
9 criminal transaction?

10 So, the fact that this all happens, almost  
11 simultaneously, I don't think defeats our analysis that what  
12 happened here, or what we think we could legitimately argue to  
13 you, a jury, is that -- and I am just going to call the third  
14 person the third man -- that Anthony Hall and the third man had  
15 their own dispute with this individual.

16 Anthony Hall and the third man were doing something  
17 to her, assaulting her, the defendant came up and then did  
18 commit, I can't deny that's a robbery because in his statement  
19 he says: "She grabbed up on me, and I like pushed her away from  
20 me, and I went out the entrance to go out the door."

21 That clearly shows he's taking money. There can't be  
22 a claim of right, it's fungible property, she's obviously  
23 trying to stop his retention of the money and, therefore,  
24 there's the use of physical force.

25 The question is, what do we do with: She was

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1 pulling on my shirt, the guy Johnny grabs her by the neck.  
2 Anthony runs in the kitchen comes out of the kitchen and then  
3 they assault her. Is there a reasonable view of the evidence  
4 that the defendant, by that statement, was not aided by another  
5 doing a robbery and instead did a robbery of his own?

6 That the third person didn't share the same intent  
7 that the defendant did. That third person wasn't in any way  
8 trying to aide a robbery by the defendant but what the third  
9 person was doing was trying to continue his own assault on  
10 her.

11 In addition, how do we analyze the statement that the  
12 defendant makes? Is it clear from the statement that while  
13 she's pulling on the shirt that's precisely when Johnny grabs  
14 her by the neck.

15 For example, even if the district attorney could some  
16 how show, or argue, or we had a case where it was clear that  
17 Johnny grabbed her by the neck and Johnny also had an intent to  
18 steal, do we know that he grabs her by the neck at the same  
19 time as she was pulling on the shirt?

20 Or, would it be reasonable for me to argue to the  
21 jury, that a fair reading of that, of that entire paragraph, is  
22 that: Yeah, the defendant does his robbery, he's going away,  
23 she pulled on his shirt some point in that, very close in time,  
24 but we don't know if it's simultaneously, the guy Johnny grabs  
25 her by the neck and then continues whatever he does.

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1 I am not saying believe part of it and disbelieve  
2 another part of it. I'm saying that the reading of it, that  
3 the district attorney would like to do, that it's clear that  
4 all happens at the same time. That's a fair reading. But my  
5 reading of it also is a reasonable reading if you look at that  
6 in the light most favorable to the defendant.

7 That's why I believe that Negron really isn't an  
8 opposite case in this discussion. Because I'm really saying,  
9 even if we credit what he's saying, what are the reasonable  
10 ways to read that statement.

11 And I think it's important to note, along this line,  
12 that there has been a change in the law regarding affirmative  
13 defenses. Because there was a very significant case, a First  
14 Department case, that's called People v Devinish.

15 Which was a case where a defendant is seen, he's  
16 coming through the window into a building and then at this  
17 floor are tools. And there's a statement by someone who  
18 actually lives in the building, I don't know, those could have  
19 been my tools. And there was an argument about whether or not  
20 the defendant was entitled to an affirmative defense of  
21 trespass, Okay?

22 And the Court in the First Department said, you know,  
23 the defendant has to really, like show something, put something  
24 in the case to show why they should get the affirmative defense  
25 such as trespassing. They can't just rely on, what may be in a

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1 sense, a reasonable inference from the evidence that's there  
2 before the court. So the court didn't give the affirmative  
3 defense.

4 And there was a dissent by Justice Sacks, who, you  
5 know, went through, you know, the normal stuff, it must be  
6 impossible to commit the greater offense. There must be a  
7 reasonable view of the evidence. And he also went through the  
8 Scarborough analysis. But he said, in a sense, it's not like  
9 the defendant has to come in and say, see, they asked him the  
10 question: Richardson, what are you saying, at the time when  
11 she was pulling on your shirt did -- is that the same time that  
12 Johnny was grabbing her by the neck?

13 And that Richardson would have to say, and it would  
14 have to be in here, she was pulling on my shirt and then she  
15 let go and I'm out the door and then the guy Johnny grabbed her  
16 by the neck.

17 Like that doesn't have to be clarified by the defense  
18 to get a lesser included. It's the opposite. It has to be  
19 clarified by the prosecution to defeat the lesser included  
20 defense.

21 And what's interesting, the reason I bring up  
22 Devinish, is because Devinish is a case where the defendant  
23 hasn't really proved anything, and it followed this long line  
24 of cases in the First Department. I know because we could  
25 never get lesser included. They say you're trying to

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1 speculate, you're trying to argue inference from the lack of  
2 evidence, in a sense.

3 And then, you know, in 2005, the Court of Appeals,  
4 right, at 26 NY 3d 727, it overturned Devinish and on the lines  
5 of what had been written in the dissent. That was their  
6 ruling.

7 And, I just think, what it proves to me, and what it  
8 stands for, is where there is a record basis on which a jury  
9 can reasonably conclude that the prosecution has failed to meet  
10 its burden of proof on the distinguishing elements of the  
11 greater crime, has failed to prove, for example, that this was  
12 happening simultaneously. Has failed to prove that they were  
13 acting in concert anywhere.

14 Even when there is no evidence affirmatively  
15 indicating that the defendant is innocent of the greater and  
16 that he's only guilty of the lesser, that, in that situation,  
17 Devinish makes clear a charge down is required upon request.

18 Putting it slightly differently, it's not improper  
19 speculation, right, which is often the district attorney's  
20 argument to try to defeat, it's not improper speculation to  
21 treat equivocal facts, because that's what we have here  
22 equivocal facts, equivocal statement, a statement I can read  
23 one way and they can read another way, and they are both  
24 reasonable ways, it's not improper to read equivocal facts or  
25 deficiencies in the prosecutions proof as the aggravating

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1 element as the basis of a reasonable view of the evidence, that  
2 the jury could or should convict only on the lesser included  
3 offense.

4 I should also say that Devinish did site Scarborough  
5 in support of it's ruling there. And that's why I think the  
6 defendant is entitled to the lesser included and it would be a  
7 denial of his right to due process under both the U.S. and New  
8 York Constitution if it wasn't given.

9 Thank you, Judge.

10 THE COURT: Thank you. Mr. Bogdanos.

11 MR. BOGDANOS: Yes. Your Honor, as I indicated,  
12 I think there is a reasonable reading of the evidence that  
13 entitles the defense to the affirmative defense so the People  
14 are conceding that.

15 I hope at this point, in both my career and this  
16 trial, I convinced the Court that I don't make arguments simply  
17 to make them, but rather when Mr. Klein, the defense, makes a  
18 good argument you heard me say, oh, good idea, I change my  
19 mind.

20 On this one, however, we do not have a meeting of the  
21 mind. But I want to be abundantly clear, we agree that the  
22 jury may choose, even in the testimony of a single witness, and  
23 here we're talking about the statement of Mr. Richardson, the  
24 jury may choose to accept some portions, reject other.

25 And I don't want to stand here and say that I am

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1 going to, in any way, argue to the jury to accept all or  
2 nothing. And, so, I don't want to mislead the Court, I do  
3 intend to suggest, where there's evidence to show, that the  
4 defendant's statement is inaccurate. I will show where that  
5 is.

6 So, starting from that premise, it is none the less  
7 the People's position, in this case, that what Mr. Klein is  
8 asking the Court to do, is actually to countenance a selection  
9 dissection of the integrated testimony of the single witness in  
10 this case, Mr. Richardson.

11 I have an extra copy for Your Honor, do you want  
12 Negron? Sure.

13 (Handing up to the Court.)

14 MR. BOGDANOS: But I understand Mr. Klein's  
15 argument. Here's the problem with Mr. Klein's argument. He  
16 wants the argument to rely on the temporal nature of Mr.  
17 Richardson's description of the event and that's too narrow a  
18 focus.

19 It's also -- you can't just look at both charges.  
20 That's why I asked before, are we asking for a charge down on  
21 Rob 2, or Rob 1, or both. It's both. It's fair.

22 But let's look at them separately. Start with  
23 Robbery in the Second Degree, aided. Clearly Robbery in the  
24 Third Degree is a lesser included provided there's a reasonable  
25 viewing of the evidence that supports it.

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1 But what is the reasonable viewing of the evidence?

2 Well, putting aside all the other testimony, your allowed to  
3 have contradicting testimony. No argument there. But the  
4 medical testimony is pretty clear that this is not a one person  
5 operation given the nature of all the injuries.

6 But it doesn't mean that they don't get a charge down  
7 based on the medical testimony. But Mr. Klein's argues that  
8 it's the defendant's statement that offers them a charge down  
9 on Rob 2. But the defendant's statement in this regard is a  
10 single integrated whole.

11 Mr. Klein read it properly, it's, if your using the  
12 transcript, of course which isn't in evidence, but it's Page 6,  
13 starting at Line 20, when Mr. -- according to Mr. Richardson:  
14 Hall is banging Helen Abbott up against the refrigerator. "I  
15 pushed them apart. Then he's saying no, she got your money,  
16 she got your money." She then says: "I don't know why you call  
17 him here -- sorry, I don't use that word. I ain't giving him  
18 shit."

19 And at that point he reaches over, Mr. Richardson  
20 says in this integrated moment, "the money you owe him goes to  
21 me." And he reaches over and takes it.

22 Prosecutors in every court room, in this court house,  
23 are always saying when you have intent you have to actually  
24 look into the inner operation of the individuals mind. It's  
25 not as if someone pulls out a gun and says I want to kill you



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1 and then pulls the trigger.

2 Well, we have that here. We have exactly that here.  
3 We have the exact words of Mr. Richardson and why Anthony Hall  
4 was grabbing her. She got your money.

5 So, this particular, the request to charge not on Rob  
6 2 aided isn't just unreasonable, it's inconceivable. The jury  
7 would have to believe, dissect a single sentence of his  
8 testimony -- and Hall didn't say she got your money but was  
9 banging her up against the refrigerator and he did reach over  
10 and grab the money.

11 How is that conceivable in this particular case, on  
12 this record, before this Court? The People submit Rob 3  
13 just -- there is no reasonable view of the evidence in which  
14 Rob 2 gets charged down to Rob 3.

15 Turning to Robbery in the First Degree. It's a  
16 different analysis because it's a different portion of the  
17 evidence. Same thing now, it's the transcript at Page 7, and,  
18 of course, you know, the People will provide to the Court the  
19 DVD or, if it's okay with the defense now, the transcript, if  
20 he agrees, for the Court's consideration. Just for the Court's  
21 consideration. If the Court wants to take this under  
22 advisement.

23 But with regard to Robbery in the First Degree here's  
24 his exact words: "She was pulling on my shirt, the guy Johnny  
25 grabs her by the neck. Anthony runs in the kitchen and comes

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1 back out of the kitchen, I don't know what he had in his hand."

2 And then he talks about the stabbing.

3 How is there any reading of that that isn't  
4 simultaneous? But even, my argument is, even if it isn't,  
5 there is no requirement that it be simultaneous.

6 Because on the facts of this case, not some other  
7 case, this case, we know for a fact that the defendant, that  
8 the kitchen, is a few feet from the front door. That's the  
9 evidence on record in this case. The evidence, the  
10 uncontradicted evidence in this case, according to the  
11 defendant's statement, is that the stabbing took place in the  
12 hallway after he left the kitchen. Well, that's a few steps to  
13 the front door. A few steps.

14 So, under the reading of the evidence in this case,  
15 Mr. Klein is asking Your Honor to somehow assume, not a hallway  
16 of a few steps to the front door, but some much larger area, in  
17 some other case, not this case.

18 And there is no reasonable view of the evidence that  
19 supports that. According to his statement, she, Ms. Abbott, is  
20 grabbing the defendant's shirt after he's out, out of the  
21 kitchen into the hallway.

22 "And she was pulling on my shirt, the guy Johnny  
23 grabbed her by the neck." If it's not happening simultaneously  
24 it is, none the less, and the People argue it does, it is, but  
25 it is none the less happening while the defendant is still in

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1 possession of the money. Which makes any force used while he's  
2 in possession of the money Robbery in the First Degree.

3 So, for a slightly different reason, it's the  
4 People's position that Robbery in the First, a charge down to  
5 Robbery in the Third Degree, is not supported on this record.

6 THE COURT: Thank you. Anything further Mr.  
7 Klein?

8 MR. KLEIN: No.

9 THE COURT: Any other charges or requests?

10 MR. KLEIN: No.

11 MR. BOGDANOS: I have a couple that I think are  
12 standard but it's better to be safe than sorry.

13 THE COURT: Yes.

14 MR. BOGDANOS: With regard to assessorial  
15 liability, or acting in concert, and I am using CJI, Your  
16 Honor, you know, varies -- fine -- slightly. Fine.

17 I want to make sure there is no claim of mere  
18 presence in this case and no evidence so I assume Your Honor is  
19 not including the optional language of mere presence in the  
20 assessorial liability section.

21 And, I shouldn't assume, I am asking Your Honor not  
22 to include --

23 MR. KLEIN: Well, Judge, I don't mean to  
24 interrupt.

25 MR. BOGDANOS: That's okay. That's fine.

Glenn J. Merola, Sr. Court Reporter

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1 MR. KLEIN: I want that in there. I don't know  
2 what the jury will make of this evidence here in terms of  
3 whether the defendant was merely present when all of this went  
4 down. I have no clue. There's no reason to take that out of  
5 the case if someone is merely present.

6 If a juror says, you know, how the defendant knew all  
7 of this, you know, how he knows this, he saw this all happen?  
8 He was there. He saw it all happen. That's how the defendant  
9 knows this stuff. He doesn't know much about it. Some juror  
10 can say he was merely present there.

11 You can't take that out of the case because we didn't  
12 affirmatively show that perhaps he was merely present, that  
13 that's a reason if you find someone isn't present, it can help  
14 support Mr. Bogdanos' position, that he must have been  
15 present. You don't take it out of the case because there isn't  
16 any way that they showed that he was merely present when this  
17 happened.

18 THE COURT: Thank you. Mr. Bogdanos.

19 MR. BOGDANOS: Nothing additional on the mere  
20 presence. The second, again, still sticking with assessorial  
21 liability, there is a paragraph in CJI: Acting in concert with  
22 a person who is not here on trial. I am specifically  
23 requesting that Your Honor include that language.

24 I see Your Honor nodding. I will take that as a  
25 yes. And that's it on the acting in concert.

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1 MR. KLEIN: I guess in there I can't object to  
2 this but also I think the Court would have to fashion something  
3 about, don't speculate about what's going on with Mr. Hall,  
4 right?

5 MR. BOGDANOS: Right. I mean, certainly, I  
6 pulled it up this morning and the language is: You must not  
7 speculate on the present status of that person. I plan, I am  
8 fine, and I just gave Mr. Klein a copy.

9 THE COURT: That would be a standard charged.

10 MR. BOGDANOS: I am fine with the standard  
11 charge. The next charge, circumstantial evidence.

12 Now, I recognized this is not an entirely  
13 circumstantial evidence case but I -- but there is a portion of  
14 the circumstance -- if Your Honor is already planning giving it  
15 you can just tell me to stop I don't feel the need to keep  
16 arguing.

17 THE COURT: Well, let's hear from Mr. Klein.

18 MR. BOGDANOS: It's the next page in the CJI.  
19 And there's a section in the CJI that talks about two types of  
20 evidence, namely direct and circumstantial. The first section  
21 is, whenever there is circumstantial evidence, and then there's  
22 a section, that if the entire case, obviously, I am just asking  
23 that you give it up until, I have got a line on there where it  
24 is.

25 I mean I got an extra copy for the Court if it makes

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1 it easier. Here's the circumstantial evidence charge. It's  
2 the first page of CJI and then the, up to the first complete  
3 paragraph of the second page, where it indicates the law  
4 drawing no distinction between circumstantial and direct, and  
5 then the rest talks about if the entire case rests on  
6 circumstantial evidence, which obviously this one doesn't, and,  
7 again, exactly as is in CJI is what the People are asking.

8 MR. KLEIN: I'm sorry. I'm confused.

9 THE COURT: This is basically a charge on  
10 circumstantial evidence versus direct evidence, revering the  
11 two, isn't that correct, isn't that what you're asking for Mr.  
12 Bogdanos?

13 MR. BOGDANOS: Yes, Your Honor.

14 MR. KLEIN: Why are we taking out the  
15 circumstantial evidence if it involves drawing the inferences?  
16 That's the part that is taken out because of the suggestion  
17 here?

18 MR. BOGDANOS: Because that particular  
19 paragraph, if you read it, says guilty based solely on  
20 circumstantial evidence. Everything from that paragraph on is  
21 only applicable to cases that are solely based on  
22 circumstantial evidence. I mean I didn't write this, I didn't  
23 draft this, I printed this. See, the last sentence is solely  
24 based --

25 MR. KLEIN: Judge, I understand what Mr.

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## TOD/CHARGE CONFERENCE

1 Bogdanos is saying, but I don't think that's a basis to take  
2 out the whole explanation here. I think what the Court has to  
3 do is to say circumstantial evidence requires the drawing of  
4 inferences, I will explain the process involved in analyzing  
5 that type of evidence. Period.

6 Takes out the next two lines and then adds in the  
7 whole discussion of what do you do with circumstantial  
8 evidence. How do you draw appropriate inferences. Not the --  
9 like that doesn't come out just because there's other  
10 evidence. There is also circumstantial evidence in the case  
11 and they have to know how to analyze that and the rest of it  
12 doesn't seem that this is only appropriate to a solely  
13 circumstantial case.

14 MR. BOGDANOS: Actually, that is what CJI says,  
15 if you go to the front page, it says circumstantial evidence,  
16 entire case, and it indicates that's where you stop. I am not  
17 making this up this is where -- Your Honor, there is a second  
18 charge on circumstantial evidence versus direct.

19 THE COURT: Generally, or something like that,  
20 where the evidence is based in part on circumstantial evidence.

21 MR. BOGDANOS: That's fine.

22 THE COURT: Is that what you're requesting?

23 MR. BOGDANOS: I am requesting that.

24 THE COURT: Because that has some of the  
25 language that you crossed out in.

TOD/CHARGE CONFERENCE

1 MR. BOGDANOS: Totally fine. I mean my access  
2 to CJI were all webb base now and the webb base version, public  
3 case of CJI, didn't have a separate charge, it just indicated  
4 where to stop. I am fine if you have a separate charge I have  
5 no problem with that.

6 THE COURT: We do.

7 MR. BOGDANOS: Okay, then that's totally fine.  
8 Then the next, I would ask for an expanded charge on intent,  
9 again, right out of CJI, that's the next page, for all the  
10 ropes that Mr. Klein just mentioned in the lesser included  
11 argument, I adopt everything he said in terms of intent for  
12 purposes of the expanded charge on intent.

13 THE COURT: Well, when it's requested I normally  
14 give it. Do you have any opposition to it?

15 MR. KLEIN: No.

16 THE COURT: All right.

17 MR. BOGDANOS: And then the next request I would  
18 make is the standard consciousness of guilt CJI provides.

19 In this case, the People contend, Your Honor can  
20 offer, say that, or just leave it up to the People on  
21 summation. I don't feel strongly about that. But if we're  
22 clear the People's argument about the consciousness of guilt  
23 will be both the false exculpatory statement of a false alibi,  
24 asking someone to provide a false alibi, and also the flight  
25 from the apartment building itself. ;.



TOD/CHARGE CONFERENCE

1 But I don't need the Court, if Mr. Klein objects to  
2 the Court saying that, I can say that on summation but I am  
3 asking for the charge.

4 THE COURT: Mr. Klein.

5 MR. KLEIN: I'd ask that the Court not give the  
6 examples that the district attorney finds but I don't have a  
7 basis for saying that there can't be a consciousness of guilt  
8 charge. However, I think that it should end where it says the  
9 weight and importance you give the evidence offers to shows  
10 consciousness of guilt depends on the facts of the case.

11 MR. BOGDANOS: Fine. Fine. That's fine.

12 THE COURT: You don't like the last sentence?

13 MR. KLEIN: Right.

14 MR. BOGDANOS: That's fine. I don't care. It's  
15 an argument anyway. If it's not anything more that's fine.

16 MR. BOGDANOS: And then the last page is  
17 corroboration of statement.

18 THE COURT: No problem with that, I take it?

19 MR. KLEIN: I'm sorry. I apologize, Judge.

20 THE COURT: Corroboration of statement.

21 MR. KLEIN: Can't object to that.

22 MR. BOGDANOS: Nothing else.

23 THE COURT: All right. Thank you both. This is  
24 what I am going to do since we have the luxury of time. I am  
25 going to take a little time to mull over some of these

TOD/CHARGE CONFERENCE

1 requests, certainly the request for a charge down to Robbery in  
2 the Third Degree is a very, very important issue, or could be a  
3 very important issue in the case so what I will do is this.

4 I will let each side know informally, tomorrow, what  
5 the ruling will be. And that way you will be ready to prepare  
6 for summations on Monday and then we'll make a formal record of  
7 things on Monday before you actually begin your summations.

8 So if you call chambers or come by the courtroom at  
9 some point tomorrow I will give each side the answer.

10 MR. KLEIN: Can we just come up for one second?

11 THE COURT: Yes.

12 (Bench conference was held off the record with the  
13 Court and counsel.)

14 (Bench conference concluded, back in open court.) (.

15 THE COURT: So, that's it, unless there is  
16 something.

17 MR. BOGDANOS: Yes, there is. Mr. Klein had  
18 asked for the Polaroid photographs to be marked as a court  
19 exhibit so I have taken the photos of that and I got them now  
20 in my file. So I will just offer them as a court exhibit, for  
21 the record, four Polaroid photographs that were taken by  
22 Detective Henriquez at the crime scene on January 13th.

23 THE COURT: Can you just confirm with Mr. Klein.

24 MR. KLEIN: That's fine.

25 THE COURT: They will be Court Exhibit 1 through

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TOD/CHARGE CONFERENCE

1 4.

2 MR. BOGDANOS: And then, with regard to court  
3 exhibits, since we're preparing a record, the People would like  
4 then to provide, I will do it tomorrow, it DD5s that the People  
5 offered to the Court for the Court's decision on Brady, perhaps  
6 they ought to be a court exhibit as well.

7 THE COURT: I have them all up here so we can do  
8 that.

9 MR. BOGDANOS: Do you want me to mark those? I  
10 can get more copies. So, whatever Your Honor wants, whatever  
11 is easiest.

12 THE COURT: You probably should get another set,  
13 show it to Mr. Klein, and once we are in agreement we'll mark  
14 it.

15 MR. BOGDANOS: Fine. I will take care of that.  
16 Thank you. With regard to defense exhibits, I want to make  
17 sure I understand, A1 to 19, then B and C, I have in evidence.

18 And the only thing that's not is D which was shown to  
19 Detective Torres to refresh her recollection. I just want to  
20 make sure I have that accurately.

21 THE COURT: I believe that's correct. Mr.  
22 Klein, Ms. Legler?

23 MS. LEGLER: That's correct, Judge.

24 MR. BOGDANOS: And with regard to C, the People  
25 had mentioned B, that you were referring to B, that there were

TOD/CHARGE CONFERENCE

1 two hearsay statements that the People had requested be  
2 redacted so, there was no objection subject to redaction, it's  
3 the window, period, of date last seen and we found portion.

4 So I just want to make sure that I done that  
5 correctly with the defense and then I guess the defense copy  
6 could just be redacted appropriately.

7 MR. KLEIN: Okay.

8 MR. BOGDANOS: I guess we can do that before it  
9 goes to the jury. Same thing with it DNA files, I had pulled  
10 out of the DNA files all the hearsay that Mr. Klein had talked  
11 about, I think I got it all, we can do that before.

12 MR. KLEIN: We'll also have to do it if they  
13 request personnel records from the Parks Department.

14 MR. BOGDANOS: We have to do that too, right.

15 MR. KLEIN: We can take care of all of that.

16 MR. BOGDANOS: But that's it Judge.

17 THE COURT: All right, Monday morning, 9:45.

18 (The trial was adjourned to Monday, September 26,  
19 2011.)

20 (Continued on next page.)

21

22

23

24

25

## Colloquy

1 SUPREME COURT NEW YORK COUNTY  
 TRIAL TERM PART 45  
 2 -----X  
 THE PEOPLE OF THE STATE OF NEW YORK x IND#  
 3 x 3534/08  
 x  
 4 -against- x  
 x CHARGE:  
 5 MARK RICHARDSON, x MURD. 2  
 x  
 6 Defendant. x  
 -----X  
 7 JURY TRIAL CONTINUING

8 111 Centre Street  
 New York, N.Y. 10013  
 9 September 26, 2011

10

11 B E F O R E:

12 HONORABLE BRUCE ALLEN,  
 JUSTICE OF THE SUPREME COURT

13

14

15 A P P E A R A N C E S; (Same as previously noted)

16 -----

17 THE COURT CLERK: Case on trial continued. The  
 18 defendant, his attorneys, and the assistant district attorney  
 19 are present. The jury is not.

20 THE COURT: Good morning, everyone.

21 MR. BOGDANOS: Good morning, Judge.

22 MR. KLEIN: Good morning.

23 THE COURT: We did have a brief discussion at  
 24 the bench concerning the charge. Does either side wish to be  
 25 heard further?

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PROCEEDINGS

1 MR. KLEIN: No.

2 MR. BOGDANOS: No, Judge.

3 THE COURT: And are both sides ready to address  
4 the jury?

5 MR. KLEIN: Yes.

6 MR. BOGDANOS: Yes, Judge.

7 MR. KLEIN: Didn't you have to put on the record  
8 that you are giving the Rob 3?

9 THE COURT: Perhaps. I don't know if that's on  
10 the record or not. The parties have been notified that I have  
11 granted the defense request to charge down to Robbery in the  
12 Third Degree on both of the robbery counts.

13 And there was one other issue, I will be giving the  
14 full charge on acting in concert. I know Mr. Bogdanos had  
15 asked to eliminate one sentence, or one portion of it, but I  
16 think the law requires otherwise.

17 And I have added a little bit to the circumstantial  
18 evidence charge as requested by Mr. Bogdanos.

19 Other than that, I think everything is the same.

20 MR. BOGDANOS: Thank you, Judge.

21 THE COURT: Are you ready Mr. Klein?

22 MR. KLEIN: Yes.

23 MR. BOGDANOS: And, Judge, I will need just a  
24 few moments in between summation, it's purely logistical, just  
25 to setup.

SUMMATION/DEFENSE

1 THE COURT: I will inform them.

2 MR. BOGDANOS: Thank you.

3 THE COURT: And if either side goes on for  
4 extended period of time and in my view the jury might benefit  
5 from some sort of recess I will let you know.

6 All right. May we have the jury, please.

7 (The jury enters the courtroom.)

8 THE COURT CLERK: Case on trial continued. All  
9 parties are present, the defendant is present, all jurors are  
10 present and properly seated.

11 THE COURT: Thank you very much. Good morning,  
12 ladies and gentlemen. Welcome back. As you know we're going  
13 to begin this morning with the summation, closing argument of  
14 the People, Mr. Klein will go first.

15 MR. KLEIN: Thank you, Judge.

16 This may be a moment of great disappointment if  
17 you're expecting soaring orator on behalf of a defendant.  
18 You'll be sorrily disillusioned. Or, a passionate urging that  
19 you find some fundamental worth, even in that man, and, thus,  
20 not hastily condemn him, then you are listening to the wrong  
21 speaker.

22 Or, you are expecting me to convince you, there lies  
23 an innocent man wrongly accused of a terrible crime. Then you  
24 came in with a false expectation that I can't hope to fulfill.

25 Because I will not, and do not, speak for that

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## SUMMATION/DEFENSE

1 individual man. And I am not a mouth piece for Mark  
2 Richardson. And will not defend him as an unjustly accused  
3 member of our civil society. It's not my job as a lawyer in  
4 this courtroom and it's not my role as a human being on this  
5 earth.

6 My work here, at least my understanding of my work  
7 throughout this trial, is to encourage you to put certain  
8 principles into practice as you decide that mans faith, and to  
9 ensure, as well as I can, that all that is put before you here  
10 in this courtroom, is seen from the perspective of those ideals  
11 and those rules, to urge you to believe that those principles  
12 must inform the decision that you will be called upon to make.

13 That the burden to persuade you of guilt lies totally  
14 upon the prosecution. That a man who was accused of terrible  
15 crimes need not prove his innocence in order to justify his  
16 acquittal. That the burden is to prove guilt beyond a  
17 reasonable doubt. That the law uses that term for a specific  
18 reason. To tell you how convincing the evidence of guilt must  
19 be, in fact, to permit a verdict of guilty. That a man must be  
20 presumed innocent, not as an innocent before God, but of the  
21 crimes for which he's charged and that that presumption demand  
22 that you acquit him in light of the horrors placed down before  
23 you unless the prosecution proves beyond a reasonable doubt  
24 that he's in fact guilty of those very crimes.

25 My role is, thus, narrowed, as it has been I think

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## SUMMATION/DEFENSE

1 throughout this trial. And, thus, what I say will be limited,  
2 not in scope, and not in the material that I plan to cover, but  
3 rather in the passion of advocacy, to call you all to a certain  
4 result.

5 My personal feelings about Mark Richardson are truly  
6 private and irrelevant. My desire for a certain verdict is  
7 inconsequential. My fervor that you hear in my voice, I hope  
8 you understand it, as merely urging you to follow and apply the  
9 rules as we must and I trust that this body will come to its  
10 own equitable and just verdict.

11 And I will tell you something else, in lieu of a  
12 formal introduction, in case any of you thought this was all  
13 going to be easy. No matter which side of the equation that  
14 you may now think you sit on, for those of you who thought,  
15 hey, it's murder, that's the charge, as it's clear from this  
16 evidence, he must have killed her, so this will be no tough  
17 jury deliberation, it's clearly guilty, let's go home.

18 Or, for those of you who thought, instead, hey, it's  
19 murder but there is no real evidence that he's the one who  
20 killed her so we'll bring in this unpleasant acquittal in a  
21 flash and go on with our lives.

22 If you hold either of those positions and, thus,  
23 thought you were somehow going to get off easy in this matter,  
24 at least in your role, then you will be sorrily disappointed  
25 again.

## SUMMATION/DEFENSE

1           After we finish the Judge will tell you what the  
2   specific charges mean in this difficult case. Mr. Richardson  
3   is not charged with being the one who actually killed Ms. Helen  
4   Abbott. Mr. Richardson is not accused of being the one who  
5   most of you would consider being the murderer.

6           The prosecution need not prove that he ever touched  
7   that cord or plunged those scissors again, and again. Or, in  
8   fact, prove that Mark Richardson ever touched the person of Ms.  
9   Helen Abbott.

10          The defendant is charged with murder, yes, with  
11   murder as serious as it exists under our law and as vile as  
12   exists in civil society, as if he were the one who did any of  
13   those actions. Yet he's charged with a particular concept  
14   called felony murder.

15          The Judge will define it. It's his role not mine.  
16   You will be called upon to determine not if he had killed Ms.  
17   Abbott with a wanton intent to kill but rather if acting alone  
18   or with others on January 11th he committed and attempted to  
19   commit the crime of robbery or sexual abuse and in the course  
20   of, and in furtherance of those crimes, or in the immediate  
21   flight therefrom, he caused the death of Helen Abbott.

22          You will be called upon to determine not if he's the  
23   one who actually committed the murderous acts, but rather if he  
24   committed or attempted to commit a robbery or a sexual abuse  
25   and alone or with others and, in furtherance of those crimes,

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SUMMATION/DEFENSE

1 caused the death of the victim in this matter.

2 And, obviously, you will be called upon to decide if  
3 he committed the related crimes of robbery and sexual abuse.  
4 And to this, to these crimes, as you will find as you sift  
5 through the evidence, guided by the instructions that his Honor  
6 will give you, no easy and quick answer will fall into any of  
7 your laps.

8 Nobody will be able to go in the back thinking the  
9 issue was simply. One, was it proven, did he kill her or not?  
10 This is simple. Let's vote and reach a meritorious verdict.  
11 Whether he's one of the people that actually did some or most  
12 of the heinous acts that took that womens life that belief  
13 won't answer the questions that you are called upon to  
14 determine or whether you believe that the proof here fails to  
15 convince you that he killed her, that he's one of the ones that  
16 actually did the physical acts that caused her death.

17 Even if you think that the proof here fails to prove  
18 that, you are still called upon to consider another different  
19 particular crime of felony murder.

20 The issue is complex and demands all of your focused  
21 attention. But instructions are for the Judge I am just giving  
22 you a hint of what's coming and the enormity of the task that  
23 now lies ahead for each of you.

24 I want to return to my job. My function. My role.  
25 And what I said I did and did not want to do here, and be here,

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## SUMMATION/DEFENSE

1 in not wanting to defend the moral integrity of that  
2 individual, in fact, in refusing to accept any responsibility  
3 or vouching for any action or words of Mr. Mark Richardson.

4 Yet, gladly defending the moral integrity of a system  
5 in which I am called upon to serve, I think there's no better  
6 place to start then in evaluating the words of my client, to  
7 consider the 16 minutes of videotaped statement of his words  
8 that you saw presented on those screens.

9 The display of his: This is the real truth. That he  
10 uttered up there. Remember that ghastly moment in the midst of  
11 a trial filled with blood, death, a daughter's pain, and as  
12 Detective Hernandez put it, a horrific murder that he came upon  
13 in that back room.

14 Remember how Mark Richardson began to try to convince  
15 the district attorney that he was now ready to come clean and  
16 tell all. What did he do? The doffing of his hat. Miss  
17 should I take off my hat? To show his supposed enormous  
18 respect for a district attorney who had now come to speak to  
19 him.

20 Oh, rest assured, what I say now will be the gospel  
21 truth because I obviously hold this proceeding in such serious  
22 and high regard. As if that district attorney, or any district  
23 attorney, or anybody, would be taken in, conditioned to believe  
24 that what was now going to be laid out before her, by such a  
25 phony display of obsequious respect, was going to be the actual

## SUMMATION/DEFENSE

1 truth.

2 And I trust that none of you were, likewise,  
3 influenced by the so sincere tone of Mr. Mark Richardson to  
4 think, wow, I guess a true confession, the real deal was now  
5 going to be actually forthcoming.

6 I trust that watching that video and comparing it to  
7 the enormity of what really must be explained here, made you  
8 realize that my client was engaging purely in, at least giving  
9 the least pejorative expression I can find, a pathetic and  
10 trite act of pure denial.

11 And I think you all realize that what I told you in  
12 my opening statement has now come to pass that you would find  
13 Mr. Richardson, my client, was a liar, a big mouth, a man who  
14 would callously lie to the police into the investigation of a  
15 poor womens death. Who's words would be totally funneled to  
16 only one real concern, how to protect me, poor Mr. Richardson.

17 The truth was a concept far from his concerns as he  
18 stumbled around trying to figure a convincing way to get me out  
19 of trouble. If that we would be presented with a man who would  
20 ay anything and everything to make sure that he never goes down  
21 for a murder, let alone get in trouble with state parole.

22 He'll lie big. He'll lie small. He even lies about  
23 his motivations for lying. He wants the police and the  
24 district attorney to believe that he's telling the truth now.  
25 That he should be believed now because he's coming clean about

## SUMMATION/DEFENSE

1 why he lied before.

2 It was just that I am on parole, see, and I can't be  
3 found to have been missing work and to being in a crack house.  
4 It's not like I am lying because I have some involvement in a  
5 scene in which a woman was killed.

6 You want to know where his seldom believing and  
7 deceit must begin, at least as far as that case, not that we  
8 need to believe it only began here, is it began the very first  
9 time he went with the police. You think you know what happened  
10 in February, with that February 5th meeting, because you  
11 weren't presented with the actual evidence of what happened  
12 when he went and spoke with Detective Hernandez, Dimuro and  
13 Detective Torres, you want to know what it was that actually  
14 occurred in that conversation, you heard more than enough to  
15 understand what must have gone down.

16 Richardson probably even lies as he describes how he  
17 went to the police. I went voluntarily, you know, I didn't  
18 have to go, I just volunteered. Gee, gosh, I had nothing to  
19 hide. He thinks we should believe that because he says it so  
20 heartfelt.

21 Yet, what is so interesting, is the startling lack of  
22 self-awareness that his own words portrays the total failure to  
23 understand what he actually says would actually be on anyone  
24 who listen to his words. I mean he truly thinks that by  
25 telling the ADA, and you, that he went voluntarily down with

## SUMMATION/DEFENSE

1 the police, that shows his good will that should help you,  
2 convince you, that he's a down to earth honest guy now.

3 Because in the next paragraph, in the very next  
4 paragraph, he describes how he voluntarily went down to the  
5 police and told a complete fabrication as truth as he attempted  
6 to mislead the police.

7 I mean follow the logic. Although, of course there's  
8 no logic to follow, see I'm a good guy, you should believe me  
9 now up in that screen because I voluntarily went down and then  
10 told a good lie. Believe me now when I talk because no one  
11 forced me to lie before, see, I'll just do it on my own if it  
12 serves my own purpose.

13 Sadly, not that it matters much too, how he analyzes  
14 his words and his actions but it does seem that Richardson even  
15 fails to understand the absurdity of the logic he employs as  
16 he performs his supposed act of contrition and true  
17 confession. You should believe me now because before I  
18 voluntarily went to the police and lied to them. See, I lied  
19 when no one even told me I had to lie.

20 What a cogent and coherent defense strategy. Perhaps  
21 he should really be his own lawyer given the impressive display  
22 of logical thought. He even lies on that video as he recounts  
23 what he says he had told the police back in February. He says,  
24 listen to his words, he says, I told them everything I told  
25 you.

## SUMMATION/DEFENSE

1 I was there but I left -- the thing I left out was  
2 the part about this guy hitting that woman with whatever object  
3 he had in his hand. I mean, sure, I guess that's conceivable.  
4 It's possible that he told Dimuro and Henriquez and Donna  
5 Torres that back in February. But do you believe that's truly  
6 what occurred on February 5th?

7 Certainly stretches our understanding of police  
8 practices to believe that as they were trying to figure out  
9 what had happened to this woman that they would have let him go  
10 if he told them he had snatched the money from the woman, that  
11 the woman fought back, that he pushed her off and then he's  
12 going out the door and Johnny grabbed her in a headlock. That  
13 he admitted to them that he engages in that.

14 What you would learn from the Judge will be an act of  
15 criminal robbery. Robbery. And saw the start of a violent  
16 attack and then was permitted by the police to just then walk  
17 out the door. No. Even given a ride home. And thanks for  
18 your help, Dude.

19 He lies in the presence of the very cops who were  
20 there and know what he said in his first statement in  
21 February. He's both brazen, yet frivolous, in the very same  
22 breath. He speaks to the cops on February 5th and then runs  
23 the next day to concoct an alibi.

24 Now, suppose you all determine, with regard to this  
25 act, further shows more than a cunning, clever, and cult signs



## SUMMATION/DEFENSE

1 of knowing how to protect himself or, instead, a further  
2 example of his strange sense of illogic logic as he tries to  
3 mount his defense against what he sense must be coming, a  
4 further investigation in some kind of serious criminal charge.

5 I mean he speaks about a certain day in the police  
6 station on February 5th and then runs and tries to create the  
7 paper trial he will use to convince the cops that he was at  
8 work on the very day he just discussed.

9 Then he realizes he doesn't even know what day he was  
10 really talking about after he's gone and created his alibi and  
11 has to ask Detective Donna Torres about it during one of his  
12 pathetic and whiney phone calls.

13 By the way, don't get me wrong, I am not saying that  
14 Mark Richardson's so mentally simple to know how to act in his  
15 own pure self interest and to concoct and connive for pure self  
16 preservation and, thus, we should some how excuse the  
17 ridiculous act, the fake contrition that he displayed on that  
18 seen, I am just saying that his sense of logic must leave us  
19 all somewhat astounded.

20 And another display of effective advocacy. He calls  
21 the cops and lies about the use of the dead womens phone.  
22 Confronted by the obvious irrefutable evidence that he had made  
23 all those phones calls he replies: Me? I didn't even know the  
24 lady had a phone. Must have been Desiree.

25 And then when Detective Donna asked: Desiree? Are

## SUMMATION/DEFENSE

1 you saying it was Desiree who made the calls? He seems to be  
2 momentarily stumped by his own absurdity of trying to deflect  
3 blame. Then he repeats: No, I'm not saying that.

4 But there is no answer for the question Detective  
5 Torres appropriately possess to him.

6 Then July 10th he now comes forth and in a fluid  
7 attempt to impress the district attorney and the defendant,  
8 with his new found sincerity, tells them about his character  
9 and how shocked he was to find himself in this untidy crack  
10 house.

11 I mean, says this man, in the same breath as he  
12 announces that he's on parole and he has done time before, he  
13 says: See, I'm from Queens. I mean, this stuff going on here,  
14 I mean I am not better than anyone but I never seen a place  
15 like this. Oh, the goings on in there were really too much for  
16 me and nothing in which I would ever partake.

17 Now he realizes, I assume, that he better come up  
18 with something really good and convincing. Since he knows that  
19 all his previous lying has only gotten him there in that chair,  
20 in that room, in the police station, and under arrest for  
21 murder.

22 And then, apparently, so far no one has credited a  
23 word that he said, you know, he must think and think quickly.

24 Or, perhaps, I don't know, it's been germinating in  
25 his mind since he must, somewhere, come on, in the back of his

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1 mind know this day of reckoning would soon be acoming.

2 In his head he must be figuring it all out along the  
3 lines of, well, let's see, it didn't work when I denied any  
4 participation in the facts of the day.

5 My alibi turned out to be shit. So I better give  
6 them something that offers something more than complete  
7 denial.

8 It's not rocket science to figure out his own logic.  
9 He must be saying, you know, I just left, I got out of there  
10 before anything started, so I'll give them a little something  
11 that ties me in just a bit and that he believes will have a  
12 good ring of truth and will again some how get him off the  
13 hook.

14 Hell, maybe if he says it well enough, they'll even  
15 give him a ride home to his more worthy borough of Queens.

16 He concocts now a tale of grabbing at money. Some  
17 how seeing the money in a blouse. Which, of course, we know  
18 she wasn't wearing, since we know what she was wearing when she  
19 was found slaughtered in that back room.

20 I grabbed it, of course, but I am not really  
21 admitting anything bad because he thinks, I suppose, that  
22 taking something from someone who owes something to someone  
23 else, well, that's not really stealing. But, then again, I'm  
24 not taking myself totally out of the action, that maybe the DA  
25 will believe what I said.

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1 I am not denying that I am not involved more then I  
2 said before, and since I am being more, supposedly forthcoming,  
3 then you have to believe it, that this rendition is how it  
4 really went down.

5 See, I was even there when the violence began. Not  
6 that I had any role in it. How was I to know that Johnny was  
7 about to put her in a choke hold and Anthony was to begin  
8 stabbing her in the stomach. But I was there just getting my  
9 money and then hurrying away.

10 Quite obviously this new version, oh, believe me now  
11 because I've admitted that I've lied before. Is it not truth  
12 at all. The stories absurd and flies in the face of both logic  
13 and all that we know. It's another self serving tale and  
14 deserves no respect. It's so convenient she happens to have  
15 just the right amount of money sticking out of her blouse. He  
16 said I took my money. Not that he grabbed all the money she  
17 had but his money.

18 So obviously compelling. He did something that he  
19 certainly shouldn't have done but no criminal culpability can  
20 ensue from such a petty act. So, utterly convenient he takes  
21 himself out of the place as the real violence begins.

22 Yet, we reject this story, not merely because we  
23 suspect it's real motivation, we reject it for more solid  
24 grounds because it flies in the face of what we know to be  
25 true. Takes the money sticking out of her blouse. But we know

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1 she's wearing a sweat shirt with a bra underneath. No blouse  
2 is recovered because none must have been worn.

3 He sees Anthony stab her in the stomach and the blood  
4 flows on to the shirt. Yet there's no defect in this sweat  
5 shirt. So what did he do first, pull her shirt up and then  
6 insert the scissors into her stomach?

7 And then he says she's grabbing on my shirt but he's  
8 not wearing a shirt as he goes out, he's wearing his army  
9 jacket as he goes out the door. And, sure, our understanding  
10 of his generic motivations warns us away to give any credence  
11 to this tale. We find no reason to credit a self serving story  
12 of taking the money.

13 He deserves no reason to give any credence to this  
14 man in that position trying to finagle himself away from a  
15 criminal charge. No reason to give any. Believe in a man who  
16 announces: Believe me now because I lied before. Believe me  
17 now because I do nothing but fabricate. Believe me now because  
18 I am not guilty of any crime. In his mind he's, once again,  
19 admitted to nothing and is, therefore, not worthy of an iota of  
20 truth.

21 But why the specific lies that he tells? But what's  
22 he lying about? And, even more importantly, what is it that  
23 he's hiding? What are Mark Richardson's particular reasons for  
24 lying?

25 It's not enough to say we understand why people in

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1 general in his position shouldn't be trusted. It's a much  
2 deeper question that we're called upon here to probe. And we  
3 don't start our examination of this question with why he says  
4 he lied. There's no reason to credit that either.

5 If it's not parole, that he simply didn't want his  
6 drug related parole violated because he's, once again, involved  
7 in a crack house, if that doesn't explain it then why does he  
8 lie and do it in that video in his own particular way?

9 Listen, folks, no one can or will ever critique you  
10 if you draw what is certainly a reasonable inference and find  
11 that the defendant is minimizing his role and must be guilty of  
12 murder if you find that he minimizes his role in what must be  
13 his actual partaking in a hideous crime.

14 After all, he's shown his willingness to lie. He  
15 spins an unbelievable tale. And certainly has an enormous  
16 motivation to not want to be convicted of what a true  
17 confession might make all but inevitable.

18 I mean, all of you, as reasonable people, had to be  
19 considering that as the probable and likely answer to the  
20 question of: Why was he saying what he said? At least after  
21 the second time that the video was shown to you in this  
22 courtroom.

23 Yet, how do we know, how do we know what, in fact, is  
24 being truly hidden by his self-serving tale? Is the only  
25 reasonable inference that he's hiding a true tale of murder?

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1 Is the only reasonable inference that he's motivated by hiding  
2 an act which would make him guilty of felony murder robbery or  
3 sexual abuse.

4 In his mind, absolutely, Whatever he actually did,  
5 whatever he truly did in that house, surely makes him guilty of  
6 something. And, thus, can never be exposed. In his mind.  
7 Sure. Whatever he actually did, what ever level of  
8 participation he engaged in, in his mind, makes him guilty of  
9 something he can never admit to and must never be revealed to a  
10 jury.

11 But how are we possibly secure in our feeling that we  
12 know what that hidden reality must be? Are we really so  
13 confident from what we seen in this case, from the evidence  
14 given to us for the past two weeks, not only that it's  
15 reasonable to assume that he's hiding acts of participation in  
16 robbery, sexual abuse, and murder, but that is the only  
17 reasonable hypothesis, the only reasonable inference to gain  
18 from those lies.

19 We're so certain that the only reason he would make  
20 up another lie is because he had to cover-up what he knows is  
21 his true role in her death. Whatever's presented to us makes  
22 us so certain that that's the solution to the conundrum we face  
23 here. Sure it's an attractive option. No doubt. After all,  
24 we want an explanation for a death, and if he gives a phony  
25 explanation that fails to account for that death, then we

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1 logically assume what was lacking in the true explanation is  
2 that very death.

3           It's not only attractive but we feel in a way  
4 compelled to accept it given the horror for which someone must  
5 stand to account. It's not only enormously alluring but it  
6 would serve him right, after all, he's the one who makes it so  
7 difficult to find out the true circumstances of Ms. Abbott's  
8 death.

9           But doesn't it have a certain, it's almost magnetic  
10 sense of attraction, also serve to warn us off from jumping to  
11 quickly? Do the rules of this courtroom permit us to easily  
12 accept such a solution? Are we really so certain that that's  
13 the only answer to the question you face?

14           Are we really certain that what his lies prove is  
15 that he's covering up his guilt for the crimes of which he  
16 stands accused? Or, are we, on that fundamental question, not  
17 really convinced?

18           Is it not reasonable to think, to consider, that  
19 there may be other reasons beside abject guilt of murder for  
20 why he would come in with a perjurious tale?

21           In fact, just open your eyes to what we know about  
22 this case and this house. Reasonable hypothesis abound. We  
23 simply need to be willing to not shut our eyes and not  
24 conveniently ignore what we know in a mad rush for what we,  
25 even too, would be a justifiable view because there are plenty



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1 of ugly reasons, other than those of guilty for these crimes,  
2 for why Mr. Richardson would utter this preposterous tale and  
3 here lies the true difficulty in this most sordid case.

4 Sure, who could deny that it's reasonable to think  
5 that, as the prosecution will argue, that Richardson did not  
6 that, not just what he says, but much more, that he must have  
7 participated in a felony murder.

8 And who can say that's not a plausible motivation for  
9 his lies. And, in fact, would be the truth of the case. But  
10 is that really the only reason all inferences that can be made  
11 concerning why he, in particular, would lie in this situation,  
12 knowing what we have learned about him and his actions and that  
13 house?

14 So how do we know that what he really did with that  
15 woman must amount to guilty of those crimes for which he's been  
16 charged? Yeah, he thinks that if the truth came out he would  
17 be in terrible jeopardy. But what's the truth that must not be  
18 revealed? How much did he see? What did he actually do? What  
19 bad acts, ugly acts, which may indeed fall short of  
20 participating in felony murder, is he trying to hide by telling  
21 what he thinks is a self exculpating story?

22 I mean we can't ignore the evidence that's been  
23 placed before us and be unwilling to explore what we know about  
24 that apartment. It's unattractive. I know. And it's smacks  
25 what I am going to do of victimizing the victim. Yet, I'm

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1 sorry, I won't leave any rock unturned.

2           It's a crack house that apartment. That's what it  
3 is. And it doesn't change that simply because Ms. Abbott's  
4 death came about there. Nor because she has a wonderful  
5 daughter. Doesn't matter that she has grandchildren or a  
6 husband who severed in the Air Force. She's also a crack  
7 addict and was in the middle of using crack when she died.

8           There's evidence of semen and sex abounding in that  
9 back room. And she's not too old in her wig to be attracted to  
10 men. She wouldn't engage in reckless sexual acts of her own  
11 given what we know of her own apparently reckless behavior.

12           Yet, don't besmirch the dead. Yet we can't sanctify  
13 them either. It's ten dollars a hit and any unknown stranger  
14 gets use of that room for, in Detective Dimuro's words,  
15 whatever, 24/7, she allows strange people to do what they  
16 want.

17           And, what, we should assume she just stands away from  
18 the fray, she just runs this crack hotel or she's part of the  
19 scene? Look at that place. Anything and everything goes.

20           Listen, I wasn't there and neither were you, I don't  
21 know what went on in there any more or less than you do, or the  
22 prosecution does, but I know, and so do you, what it's logical  
23 to infer, not by making it up or spinning tales out of thin  
24 air, not by speculating about scenarios for which there is not  
25 a shred of evidence, but instead looking at this evidence

Glenn J. Merola, Sr. Court Reporter

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1 straight in the mouthy.

2           What's Mark, Mark Richardson and her stuff doing  
3 together, mixed in semen there in that back room there on the  
4 floor? Why is his sweat on her breast or his saliva on her  
5 nipple? Wherever it is and whatever it is, it's there on what  
6 we know is an intimate part.

7           Did he grab money out of her bra? We know that's  
8 where she keeps it. So, yeah, I guess that's a reasonable  
9 inference we can make. But not inconsistent with consensual  
10 sex.

11           Did he get all the money out of her bra? Did she get  
12 dressed again, go back out in the hall? Did he steal all her  
13 money? Again, as he leave the apartment, does he  
14 surreptitiously take her wallet, flip that on the bed, after he  
15 searched through it for any possible scraps? Is he clever  
16 enough to make sure she doesn't see what he's doing? Does he  
17 see Johnny and Anthony begin their own drug related assault,  
18 who decide on their own, let's see what else we can steal.

19           After all, isn't it Anthony who she knows, as he  
20 lives in the building and, thus, Anthony, who can never leave  
21 her alive as a witness to his own ugly acts? Isn't that what  
22 we all know about crack and it's violent result?

23           Does he watch it begin and do nothing to stop it?  
24 Does he not only watch it but could careless about what's going  
25 on? Maybe even thinks it's funny that a woman is dying that

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1 death.

2           We know he sees enough to tell us in his own  
3 distorted version that something, that in fact we know did  
4 happen, did happen. That she was assaulted around the neck and  
5 eventually stabbed with some silverish object.

6           What goes on in that crack house that nobody, and not  
7 just make Mark Richardson, ever admitted it? Why does she have  
8 the DNA of two separate men, or donors on her right breast?

9           Why does she have the DNA of Male Donor C under her  
10 nails? Who did she have intimate contact with on that day and  
11 who decided to assault her? Was Mark Richardson the one who  
12 decided to kill her or, rather, the one who first sucked on her  
13 breast?

14           Did Richardson have his own sexual pleasures and then  
15 watch and others did assault and abuse her? Who is Male Donor  
16 C? Remember it's neither Mark Richardson nor Anthony Hall.  
17 And what a was his role, what was the order of pleasure or  
18 pain, and who took part in what?

19           Why is Mark Richardson's DNA found in a swab with no  
20 blood? And the three other swabs appear to be positive for  
21 human blood? What does that tell us, if anything, about the  
22 order of contact?

23           Why does Mark Richardson almost himself apparently  
24 have no blood on his clothes? Oh, there is one piece of  
25 evidence that you have to consider, which should make it

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1 implausible that he wasn't involved in a violent assault, the  
2 phone calls, the cell phone and his calls.

3 And we know, don't we, that she wouldn't certainly  
4 give up her cell phone without a violent struggle at the very  
5 least.

6 So let's examine the cell phone and see what its  
7 proven. Is there a hypothesis consistent with guilt, a  
8 reasonable hypothesis, that can logically be drawn?  
9 Absolutely. You heard Ms. Cheryl Abbott describe to you she  
10 loves her phone, carries it around with her, keeps such good  
11 contact with her mother, that's how she knew something terrible  
12 had occurred.

13 So, whoever had the phone must have taken it with  
14 violence. But then you heard something else. That Cheryl  
15 Abbott never sees her mom on crack. That her mother has a side  
16 of her life that she keeps away from her daughter. That she  
17 was surprised one day to see another man coming out of that  
18 part of the apartment. A man who she knew was a drug related  
19 resident of the building. That her mother told her it's none  
20 of your business who I decide to have in the house.

21 And she doesn't know how her mother gets money for  
22 drugs. That she never heard what the detective knew that it  
23 was 24/7, ten dollars a pop. And that she doesn't know how her  
24 mother acts on crack. Which apparently is a significant part  
25 of her life.

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1           And just not so inconceivable then, not so  
2 unreasonable to assume then, that in the middle of a joint drug  
3 binge, she would let that man use her phone. I mean, you know,  
4 folks, we have to be able the distinguish here between how  
5 evidence uncovered during an investigation can lead to the  
6 reasonableness of arresting a man.

7           That, obviously, once the detectives found this  
8 strange cell phone use that it made it enormously sensible to  
9 focus on him. But then don't assume that's the evidence that  
10 necessarily points even absorbently to guilt.

11           In this courtroom you take a cautious and an  
12 appropriate look at what evidence means and does not. Yeah, I  
13 know it's nice to think that it proves that he had killed the  
14 lady, and now took her phone and since he has her phone he must  
15 have taken it by violence.

16           But if we're going to focus on the phone do it  
17 fairly. Look at the phone records, not just January, look  
18 back, look at two numbers, those mystery numbers to that fact  
19 by the 347-992, whatever, but 646-546 whatever. You have the  
20 phone records. See how many dozens of times those numbers are  
21 called all throughout January when we have no reason to think  
22 that Richardson was ever at her house.

23           Look how often those two numbers are called and she's  
24 not calling her daughter but it shows her own strange activity  
25 both all day and all night. Those numbers obviously have no

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1 connection to Richardson nor to anyone in his family even on  
2 the evening of January tenth.

3 Look, she calls the number seven times. Those  
4 numbers are both called when we know that Mark Richardson was  
5 in the building on January 11th and when he wasn't in the  
6 building on January 11th. On 1/11 at 12:33 a time for which  
7 video exists and we know that Richardson is not there because  
8 they start watching the video at midnight, the number is  
9 called, Richardson is not in the building.

10 At 12:40 it's called again. Richardson isn't in the  
11 building. Richardson doesn't have her phone then does he?  
12 It's clearly a number that's called by her not by Richardson.  
13 The 992 number, it clearly intrigues the cops a lot too because  
14 it's a phone number she's calling 24/7. And then not only is  
15 it called, obviously by her at 2:58, four minutes before  
16 Richardson begins his series of calls, but it's called again at  
17 3:34 in the middle of his series of calls.

18 Obviously reason to assume that she's making that  
19 call if it's a number that she regularly uses and not Mark  
20 Richardson.

21 Yet, if she uses it then, in the middle of series  
22 of phone calls, then it's simple to assume that the phone  
23 possession, the obvious bounty of a violent attack, phone calls  
24 don't show that Mark Richardson wasn't involved in a violent  
25 attack, he just walks away with a phone that at some point he

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1 was obviously given permission to use.

2 He then tosses the phone once he realizes it's  
3 evidence of whatever larcenous acts he has committed.

4 I'm sorry, we don't know that he lies because he  
5 murdered Ms. Abbott. All we no in this case is it that he lies  
6 to cover up his own lousy misdeeds, whatever they are.

7 The fact that she is murdered does not mean that it's  
8 necessarily participation in felony murder that he needs to  
9 conceal.

10 What else have we learned that might shed light on  
11 the critical issues? Unfortunately, much that we learned seems  
12 to point in so many directions. We can create a web of facts,  
13 reasonable inferences, that show he must have done the crime.

14 (Continued on next page.)

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1 MR. KLEIN: Or a web of circumstances which leads  
2 us with doubts based on reason. We know that he left with a  
3 bag that he didn't have when he entered; a plastic bag that  
4 he tells Detective Torres on the phone that he had his  
5 uniform in.

6 Now, there is no special reason to trust him; and  
7 I am not -- certainly not insinuating that what he says  
8 should be believed -- but before we assume that, oh, that's  
9 where he must have hid now his bloody clothes and let's  
10 examine what the evidence did show us.

11 We know he is seen much later, right? They are  
12 looking at him coming home with the same kind of bag as he  
13 comes how many times from work. It is not so ridiculous to  
14 think he could have had his work clothes he had on that  
15 Thursday eve when he came from whatever special work program  
16 he apparently did go to on Thursday.

17 Yet he didn't come in with it; so the bag must  
18 have the bloody clothing he's decided to hide but does it?  
19 Why? What evidence proves that?

20 Why do we think -- what compelling reason is there  
21 for this jury or anyone in this courtroom to assume that the  
22 video that is shown to us consists of all the times or  
23 necessarily the first time Mark Richardson comes into that  
24 building on the evening of June 10th and in the the early  
25 morning hours of June -- January 11th? I am sorry. Because

1 that's all that's shown to you; therefore, it's all that you  
2 must consider -- like if the district attorney doesn't bring  
3 you evidence of what the video would have shown in the late  
4 hours of January 10th and you are not to consider what such  
5 evidence may have shown and some how assume that everything  
6 of relevance must have been presented to you in all those  
7 clips that were brought into this courtroom, that you are  
8 not permitted when you decide what's proven to consider the  
9 lack of evidence that is presented on a critical point.

10 You know, it's really pretty extraordinary. My  
11 conversation I guess you could call it, a cross examination  
12 of Detective Dimuro. We discussed, you know, detective  
13 there was a certain logic, right, of going forward and  
14 getting the stuff from January 11th, going forward until she  
15 is killed. You wanted to see who is around her at the time  
16 she is killed.

17 But is there some reason to think that  
18 Mark Richardson and his buddies go into the building the  
19 first time at 1:00 a.m., from thinking that the forward  
20 moving evidence is appropriate to watch as the investigation  
21 begins, to somehow thinking that that's all the appropriate  
22 evidence to collect as the investigation unfolds?

23 In fact, someone -- the DA video guy at least  
24 apparently did think three years later we should probably  
25 get January 10th too; but by then it's too late. Why,

1       though, when you see a guy and Hall and others come in a  
2       first time at 1:00 a.m. you would not go back a few hours to  
3       check? I mean they even get the phone records for January  
4       10th.

5               Let's see what Richardson was wearing the very  
6       first time he went in. Let's see what he was carrying the  
7       first time he went in before we assume guilt out of a black  
8       plastic bag.

9               Listen, guys, more power to those two detectives  
10      and the work that they do and Detective Torres and Dimuro,  
11      they obviously know how to do their stuff. They've got  
12      years of experience that they can clearly call into play;  
13      but none of us are beyond making an error in judgment. What  
14      Dimuro says when I said to him -- remember after lunch I put  
15      him back on the stand. I said I thought we had made a  
16      mistake. He said, yeah, we'd made them before.

17              Okay, he should have gone back and gotten  
18      January 10th, but that's not really the issue. The issue  
19      here is that an innocuous act by the detectives then creates  
20      and feeds miscalculations that are made by others; and then  
21      the reality of an already complex affair gets unfairly  
22      distorted.

23              Listen, Dimuro and his team don't get any video  
24      from January 10th. Okay. They don't. All right, but they  
25      don't come in and say ignore anything that may have occurred

1 on January 10th. You didn't hear that out of Dimuro's  
2 mouth. They don't come in and say we collected everything  
3 of relevance to this case and this jury; but then the  
4 Prosecution's taking the limited thing that they got and  
5 pushes us to focus on a vision of a partial reality.

6 I mean, you know, there is a problem with the  
7 creation of reality by video that it gets shown to you so  
8 many times that you think that all the relevant, world time  
9 events are contained in that video. You begin to think I'm  
10 sure that since the first time you saw Mark Richardson was  
11 at 1:00 in the morning, then in truth that's the first time  
12 that he went into that building when you have no rational  
13 basis to make such a decision.

14 Critical and unfair inferences get made by that  
15 strain of the directors's cut. He doesn't have the bag  
16 Wednesday he first goes in; but what's the time he first  
17 goes in and it doesn't just affect the bag. It's not about  
18 the bag that I'm wasting your time. It's about a much  
19 larger issue. It's not just about a bag. It's about who  
20 was in the house when the killing began.

21 I mean I hope you all get the gist of what the  
22 Prosecution was trying to prove here with all that  
23 extraordinary -- it is extraordinary video, Viper footage.  
24 They were trying to show not only what Mark Richardson was  
25 like -- we see that also. Great. They were trying to show

1 something else; that it had to have been only two people  
2 inside that house. It's Hall and it's Richardson and nobody  
3 else.

4 See, that killing must have been done by two  
5 people clearly. It is too much for one and nobody else was  
6 there; so it must have been these two, those two Hall and  
7 Richardson acting in concert. Who cares whether we know who  
8 did what -- acting in concert together just those two in the  
9 manner the Judge will define; and if it's only those two,  
10 then it must have been those two and there is no escape  
11 valve in that house -- not in reality -- for  
12 Mr. Mark Richardson. You are in for a penny. You are in  
13 for a pound, buddy. It was you and your buddy and nobody  
14 else.

15 It took two and it's only him and you who were in  
16 the house. You are in for it now. You tell us there was a  
17 guy named Johnny who began the real violence against  
18 Helen Abbott. We are going to take your fictitious  
19 invention of a third man right out of this case. Forget  
20 your bull crap, Richardson. We got the video to prove what  
21 we know. See, we got four. We got the four possible guys  
22 and the interns to watch them.

23 We got four guys and that's the universe of  
24 potential perps. We got four guys and we got names for each  
25 one. We got Mark Richardson. We got Anthony Hall and we

1 got Hoody and Mr. Umbrella; and if we could eliminate two,  
2 there is only Mark Richardson and Hall left in the apartment  
3 with Helen Abbott still alive; and we are not simply going  
4 to suggest this says the Prosecution proved it to you beyond  
5 a reasonable doubt and crush Mr. Richardson and reduce his  
6 lawyer to futile crocodile tears.

7 We have interns and they know what they saw; and  
8 what they saw leads us no doubt in comes Umbrella and  
9 Umbrella then leaves. In comes Mr. Hoody but Mr. Hoody  
10 leaves too. In fact, he leaves with Mark Richardson when we  
11 know Helen Abbott's still alive; so it's proven beyond any  
12 doubt that it's only Mark Richardson and Helen Abbott who  
13 were there in the apartment at the cold killing time; but  
14 where do they get this notion from that if they can  
15 eliminate those two people, if they could eliminate Hoody  
16 and Umbrella, then no other perpetrators can possibly be on  
17 the scene.

18 You know, I don't really know. I don't really  
19 know but I get a sense that the Prosecution got this notion  
20 from something the defendant said and they got pushed into  
21 an evidentiary distortion by both relying, God knows why, on  
22 something he says and on a misreading of something  
23 Mark Richardson said.

24 Like they were trying to understand the  
25 defendant's logic -- a difficult enough task in itself --

1 and then thinking that they understood it and could then  
2 show that they could eliminate the existence of Johnny right  
3 out of the case, cause the Prosecution seems to have found  
4 itself in an odd position as if given the very likelihood  
5 that given what we know about Helen Abbott's apartment that  
6 men stayed there all the time; and that's why they would be  
7 surprised to learn that one of them might know Hall, who  
8 lived on the floor below, and be confederate in this God  
9 awful crime.

10 Given what we know there was, in fact, DNA of  
11 other people on one of her breasts. Given the objective  
12 likelihood that there could have been a third person in the  
13 apartment, we have to eliminate the possibility that that  
14 likelihood is right cause if the likelihood remains right;  
15 if there is a reasonable inference that there was, in fact,  
16 a third man in that apartment, a Mr. Johnny, then my God,  
17 Mark Richardson may just not be guilty.

18 Oh, we can't have that. So the Prosecution is  
19 taking as the jumping off point what the defendant says,  
20 tries to eliminate the third person. It's absurd in so many  
21 ways. Fine, you want to beat him down. Okay, beat him down  
22 clearly but unavailable logic, don't beat him down by  
23 creating a distortion of the appropriate video and how many  
24 times to examine it because the very unfairness of that  
25 attack leads credence to the notion that, hey, maybe there

1 was a third man in that apartment.

2 After all you know, guys, it's really weird what  
3 the defendant says not just once but twice and I'll be  
4 damned if I could figure out why he would make this part up.  
5 I mean I know why Mark Richardson has a motivation to want  
6 to put another person there even if there was no other  
7 person. That we can all figure out. I get that; but why  
8 does he say in the conversation that it's the detectives who  
9 first spoke about it cause, listen, to what he said to  
10 Donna Torres.

11 And remember I asked Detective Donna Torres about  
12 it in the phone call he says -- Mark Richardson says  
13 referring to the February 5th meeting between him and the  
14 detectives, he said you guys said I was with someone named  
15 Anthony and Whitey. Not that the defendant had said it to  
16 them but they had said it to him.

17 Now I am sorry, I can't figure out a reason why  
18 Mark Richardson would have made that up in a conversation  
19 with Detective Torres. Then four months later when he talks  
20 about it again he says, listen -- these are his words. They  
21 are up there. I can't get in the house without Anthony. We  
22 went back in the living room. He started showing me  
23 trophies of basketball trophies of his sister and him, this  
24 and that and the other.

25 As we were leaving he grabbed the beer and drank



1 the beer. Before that occurred this other guy, I don't know  
2 him, but I guess they heard -- he says glancing at the  
3 detectives who were there in the room -- that this guy was  
4 on the elevator. He told them he was coming up to his  
5 house. He was telling them that I am going up to momma's  
6 house. Yeah, I will be there in a minute. I am just  
7 backtracking and going back forward again.

8 DA said, so Anthony said I'll be there in a  
9 minute. Yeah, I'll be there in a minute. We go upstairs  
10 through the elevator. He knocks on this lady's door on the  
11 twelfth floor. She opens the door. Let's us in. He  
12 introduces me. Oh, this is momma. Momma, this is my man --  
13 uh, uh, uh -- and I am walking past their kitchen. The guy  
14 Johnny sitting up there. He is smoking. She is back in the  
15 kitchen. I go sit in the living room and on and on. What's  
16 going on here?

17 Is Johnny the same guy who was in the elevator?  
18 Is there some cogent reason to think that? And then think  
19 that if we can eliminate the guy in the elevator from being  
20 around, we could then show there is no Johnny that could  
21 have been in the house. Is Whitey who the detectives were  
22 talking about, is he the guy had was in the elevator but a  
23 different guy from the Johnny who was up in the apartment?

24 Is Whitey the guy who the detectives knew his name  
25 was actually Johnny and is he the guy who ended up being the

1 third guy in the apartment? I don't know the answer. It  
2 certainly seems reasonable to infer that there was a third  
3 person there; not because the defendant said it; not merely  
4 because of the DNA under her nails of Male Donor C, who is  
5 not Anthony Hall nor Mark Richardson, but because these  
6 seasoned detectives who were investigating this case  
7 apparently had reason to believe it themselves.

8 Now it's even more complicated. I mean it is  
9 really complicated. I've got to tell you because it's clear  
10 that the defendant is not talking when he describes running  
11 into this person on the elevator. He is not talking about  
12 an event that's on any of the video clips that have been  
13 shown to you on this jury.

14 When he talks about going up to Helen Abbott, how  
15 long is he talking about; a time he apparently goes up which  
16 isn't reflected in the video you saw? Well, that makes  
17 sense. Why should it when the video collection for some  
18 arbitrary reason starts at midnight of the tenth and the  
19 eleventh. He says look, Miss DA and detectives, we go to  
20 Anthony's. He takes me to his house on the eleventh floor;  
21 so it's logical to think he gets off on the eleventh and the  
22 defendant says this guy was on the elevator. Not that I  
23 arrived there with this guy.

24 Like you see in the clip. So then wouldn't it  
25 make sense to look and see if this clip existed to see if

1 there is a video clip on the tenth, the late hours of the  
2 tenth, you know, only an hour before the clips do start,  
3 which could be shown, which shows an incident like this  
4 comes off with Anthony, then the guy in the elevator and  
5 Anthony Richardson and the guy gets off. I am not saying it  
6 because he says it. I am not saying believe it because he  
7 says it; but don't not believe it because you find something  
8 that only contradicts something that he never said.

9 He didn't say look at that clip. That's the other  
10 guy who was there. That's Johnny. See that guy in the  
11 hood, that's Johnny; or that guy with the umbrella, that's  
12 Johnny. He didn't say look at that clip. See that guy who  
13 arrived at the apartment building with -- the guy we know  
14 who left, Hoody. That's Johnny.

15 He says, I met a guy on the elevator while we were  
16 going up to the eleventh floor. That's the guy who the  
17 detectives think is Whitey. That guy was going to  
18 Helen Abbott. When I got there, a guy Johnny was there.

19 The Prosecution spends hours and hours here  
20 disproving something the defendant never said to you and;  
21 thus, they will ask you to believe there was no third  
22 person. Beyond this, why shouldn't we believe there were  
23 other people there? Not primarily because the defendant  
24 says it; not even basically because the defendant says it;  
25 not even at all because the defendant says it -- but what do

1 we know independent of the defendant? What do we know?  
2 What does Cheryl Abbott say?

3 The short time before this murder October  
4 something, December there was a guy from the building  
5 staying in those back bedrooms; a guy who would have no  
6 reason to show up on the video. Big surprise he would know  
7 Anthony Hall and act together with him and another guy in  
8 the building. Another great character.

9 Why do I think it is a hundred percent absurd that  
10 more folks than Hall and Richardson weren't in that  
11 apartment? Because we even see that, that people are coming  
12 in and out of the building who are never identified, because  
13 Dimuro says it -- the detective -- that, that apartment,  
14 that was active 24/7 and that she would have people who  
15 would come to stay there for sex, to use drugs, for  
16 whatever.

17 The DNA says it. It's two people's DNA on the  
18 right breast. Not Hall and not the defendant under her  
19 nails. Why arbitrarily eliminate this third person? Why  
20 this visceral need, this compelling need to get the third  
21 man out of the case? Why? Because, otherwise, the jury  
22 might find Mark Richardson not guilty of felony murder.

23 So what? Then the chips fall where they may. I  
24 am going to go back to the video for a minute because you  
25 see the defendant says something else that can certainly

1 turn back against him. The defendant says, you know, I am  
2 telling you folks in his great story all this happened in  
3 this little short period of time, you know, around the time  
4 when he says he went in for the last time.

5 Remember? And then comes out and sees the blue  
6 coated cops, so we know when the end is. He says -- listen  
7 in his statement -- I went in with Anthony and I met a guy  
8 in the elevator and pretty soon after that, I left after the  
9 whole thing happened; and then went down and saw the blue  
10 coated cops.

11 I only went into that building one time and this  
12 stuff happened right then. Yet we know that's not true. We  
13 know he went into the building multiple times. We know he  
14 didn't go into the building the last time, the time before  
15 he leaves forever with Anthony Hall; that he didn't meet  
16 anybody on the elevator the last time. He went in by  
17 himself. It's there on the video.

18 The last time he went in with Anthony was one in  
19 the morning; and it's clearly in his statement not that 1:00  
20 a.m. entrance that he is talking about when he talks in the  
21 video cause in that 1:00 a.m. entrance, he is meeting a guy  
22 outside the door and he was already arriving with Hoody.

23 I mean just get us January 10th and maybe we can  
24 make some sense out of this all. I mean it is so bizarre.  
25 What do you know now according to the prosecution? Use

1 Mark Richardson's own words against him to show there is no  
2 third man. Use an account of an act that is never reflected  
3 in the video clips. Pretend that it was, in fact, reflected  
4 in the video clips; and then show if we accept that  
5 illogical supposition, then we can eliminate any third man.

6 I mean I don't want to demean my opponent here.  
7 He does his work well nor cast any doubt on the value of the  
8 work done by his interns and staff and not say the video  
9 doesn't have it's own value in aiding us to figure out what  
10 must have gone on here; but what is so clear that maybe  
11 Richardson is either intentionally making up a story about  
12 the circumstances of his entries into that building, or  
13 unintentionally conflating months later as he tries to  
14 recall it; at least four different entries and presenting it  
15 all as one.

16 Then the lack of logic in his recounting makes it  
17 impossible to use a supposed logic to attack the notion that  
18 a third man was present. Supposedly, the Male Donor C's DNA  
19 it's just there. I know we would all like to say it must  
20 have been Mark and Anthony all up at that death scene; but  
21 we can't artificially pull and push at evidence to get to an  
22 arbitrary yet desirable result.

23 If the real possibility exists, the likelihood  
24 that there was a third man and it makes it all the more  
25 difficult to understand what really did occur up there at

1 that time, then you draw the necessary conclusions and come  
2 up with appropriate verdicts. We can't reshape reality  
3 merely to insure that we feel justified in condemning that  
4 man that the police have apparently not been able to  
5 definitively do.

6 You have the man they thought was Whitey; but may,  
7 in fact, had been Johnny and that they have arrested  
8 Richardson and are still hunting Hall. Does not mean that  
9 these two -- Hall and Richardson -- are necessarily the only  
10 two actors of relevance to an understanding of this case.

11 That's just the way it is and no video montage can  
12 change that reality.

13 Finally, it is obvious we need to consider the  
14 other crime scene and scientific evidence to evaluate its  
15 contribution to our need to comprehend what actually  
16 occurred in that apartment on the afternoon in question.  
17 Does it help us to understand what did occur in those rooms;  
18 or only emphasize the lack of clarity about what went down  
19 at that time and in that place?

20 The Prosecution in voir dire reasonably forewarned  
21 us that we should anticipate no miracles from any forensic  
22 crime scene results; that forensics would never give us the  
23 answers to everything that might be helpful to know; that  
24 there was no TV-like science that could demonstrate every  
25 move that Mark Richardson made that terrible afternoon; and

1 that certainly makes sense and proof beyond a reasonable  
2 doubt does not demand that you be able to track  
3 Mark Richardson's every move.

4 It only commands that the crimes themselves and  
5 who did them be proven beyond a reasonable doubt; but the  
6 Prosecution also assured us of something that we would be  
7 given enough facts, enough proof to know the answers to the  
8 pertinent questions that are at issue here and will not be  
9 dissuaded from asking the relevant questions.

10 Telling us that we cannot get the answers to  
11 everything to what we need -- to everything we might want to  
12 know can't lead us to thinking that we have necessarily been  
13 provided with enough information to make the critical  
14 decisions. Telling us that we cannot expect to learn  
15 everything we might like to know shouldn't influence us into  
16 accepting the notion that, well, what you see is what you  
17 get; and that's just the best that can be offered to a jury.

18 If the answers that are provided in this case by  
19 the modern science of crime detection, video, phone tracking  
20 cell towers, fingerprints, physical fit, DNA are employed  
21 together failed to provide the relevant and necessary  
22 information we need, then we can't simply say it's our fault  
23 that we came in with a false set of expectations and blame  
24 ourselves because we believe that answers would be provided  
25 that simply were not.



1           If all of that science doesn't give us the  
2 relevant information, we don't now turn against ourselves  
3 and assume that we've been conditioned by TV to expect too  
4 much and, thus, lower our own reasonable expectations and  
5 there is more. Cause there is a pernicious effect here that  
6 would influence us all when faced with a failure of  
7 scientific proof.

8           If all that we get are the meager results that we  
9 get here, we cannot somehow now lower the burden of proof  
10 based on some notion that they did the best that they could;  
11 and so we must convict him on what's been provided in the  
12 courtroom because that's all there is.

13           We don't turn it around. We don't flip it against  
14 the person on trial and say, well, I mean proof beyond a  
15 reasonable doubt can't demand that we be given answers to  
16 the questions that weren't answered here. We don't lower  
17 the burden in a criminal case saying they did what they did.  
18 We step back. We pause. We reflect and we decide.

19           Is it really enough to know that Mark Richardson  
20 was there and lied about it and went in and out and in and  
21 out and in and out and in and out? That he sweats; that he  
22 wipes sweat on his way in and on his way out? That he's all  
23 hepped (sic) up at times and at times more relaxed? That he  
24 cares less about what happened to Ms. Helen Abbott; that he  
25 leaves his sweat or saliva on some part of his (sic) breast,

1 his own semen contribution mixed with Helen Abbott on the  
2 floor in a room used for sex; his prints on a broom and that  
3 he clearly uses her phone.

4 Three and a half years after this crime was  
5 committed, two and a half years after the arrest of my  
6 client, the Prosecution itself was apparently asking for  
7 more testing, obviously concerned that what they gathered  
8 might not be enough to insure a verdict of guilt, that that  
9 their answers to their continued concerns turned up knowing  
10 that implicates Mark Richardson but only gave us the DNA of  
11 a third man under Ms. Abbott's nails tells legions about  
12 what remains known or unknown about what actually occurred  
13 and warns us not to ignore the relevance of the very  
14 questions they themselves were still trying to answer.

15 Let's see what is proven. What leads us adrift?  
16 The broom, what do we know? What do we know about the  
17 broom? We have no idea of how or why it got where it is.  
18 Oh, yeah, we could make it sound guilty. It is not hard.  
19 We can create a scenario where he must have used it to  
20 threaten Ms. Abbott or clean up the blood even if there is  
21 no blood on the broom and that it wasn't actually used in  
22 the ultimate assault.

23 After all it ends up a feet -- on a bed just feet  
24 from her body. Is that the logical way to view it and to  
25 connect it with the rest of the proof in the case because

1 the specter of the broom seems so terrible and ghastly  
2 situated as it is just feet from a dead woman's head?

3 Good. They finally got around to examine it for  
4 blood even if not done until long after Mark Richardson was  
5 arrested; but the lack of any blood on it does make you  
6 wonder if it had anything at all to do with the crimes that  
7 were committed. I mean it looks so bad there though. It  
8 looks so bad. There is her body. There is the wallet and  
9 there is the broom.

10 Look at the crime scene photo that is shown to  
11 you. Apparently, the broom's even on top of the wallet so  
12 whoever touched it must have put it there after rifling  
13 through the wallet but we know that's not true. If the  
14 picture shows that, then we are just getting a misfortunate  
15 distortion because a cop -- PO Fabrizi -- picked up the  
16 wallet and threw it back on the bed; and what we see in that  
17 photo can't be; but a print is found on it, a clean print, a  
18 good one, an undeniable one. It means he touched that and  
19 that originally seemed to be a damning accusation in itself.

20 Sure other people could have touched it. Someone  
21 else could have touched it after he did but why is his print  
22 the only one that's found? Sure, he could have just touched  
23 it. Could have been lying around. I mean you know it  
24 wasn't everywhere. It could have been placed -- it wasn't  
25 in the broom closet because we know the place was a mess;

1 but still why is it only his print the only one that's  
2 found?

3 But then we learn something in here. We learn --  
4 we can reach unfounded conclusions unless we understand all  
5 the science and we learn something new in a very undetective  
6 way. We get the necessary education not from the man who  
7 recovered the broom who got the seeming link, inculpatory  
8 print; but instead from another person who had nothing to do  
9 with that critical find.

10 It's the NYPD lab criminalist, the woman who  
11 actually teaches us something critical about the leaving of  
12 the prints. It's the lab criminalist who examined it, the  
13 lab technician who comes in and informs us -- what does the  
14 criminalist who examines the lamp comes in and tells us?  
15 While speaking about the lamp, while I am sure making each  
16 one of you to think about the broom that was found, she  
17 explained why people sometimes leave a print and why they  
18 don't. Why they do and why they don't.

19 She explains that if you simply -- simply as you  
20 inadvertently touch an object, there is a greater likelihood  
21 of leaving a readable print than if you picked it up and  
22 hold it, hold it tightly like in anger. If you grab it  
23 tightly as you would, of course, if you were using it as a  
24 threatened weapon, then the ridge lines she told us they get  
25 mushed together and tend to leave an unreadable print; and,

1 thus, whoever grabbed that broom and tossed it up on the bed  
2 is less likely to have left a print than the man who simply  
3 touched it yet never employed it as anything at all.

4 It is even bigger that testimony than the.

5 Relevance of the broom alone. You know what it  
6 does? It kind of says something to us, warns us don't jump  
7 towards any untoward conclusions just because some piece of  
8 evidence seems to intuitively push us towards a judgment of  
9 nonguilt or guilt. She informs us of avoid thinking you  
10 could easily infer guilt or innocence from a piece of  
11 forensic evidence unless you truly understand all the  
12 scientific science for why evidence can be found and not  
13 found on any object that's recovered, and what the finding  
14 and not finding of evidence really means.

15 The fact that Mark Richardson's DNA isn't on that  
16 lamp doesn't prove he never held it. That his DNA is found  
17 on a breast doesn't mean he had violent, physical contact  
18 with her either.

19 Listen, I want to be crystal clear about  
20 something. I am not saying that every exam under the sun in  
21 my examining questions, every exam under the sun has to be  
22 done in any case; that we need an invention of some kind of  
23 a new forensic tool like a microchip implanted in that guy  
24 so we could figure out exactly what he did or that you can't  
25 find guilt simply because a test you would like to have seen

1 done wasn't performed. I get it and I got it.

2 We have got to go back at the beginning of the  
3 case. It's like when that crime scene guy came in and said  
4 he was confronted with this huge mass of stuff. What did I  
5 say to him? You can't collect everything. You do the best  
6 that you can. With a huge mass of possible evidence you've  
7 got to chose what might seem relevant.

8 Sure, you would like to collect everything but who  
9 knows what's really going to turn out to be relevant once it  
10 gets to the DNA place. I am not complaining about that but  
11 I do have a wonder. It's about the lack of testing on stuff  
12 that they did recover. I mean they recovered the homicide  
13 clothing. It's there with the body, removed under  
14 appropriate care by a medical doctor.

15 We then learn they developed DNA techniques that  
16 could see who touches the clothing. They've got a technique  
17 that could give us some answers. Why wasn't this done? The  
18 Prosecution tries to get the High Sensitivity guy, remember,  
19 Mr. O'Connor to say who knows if we would have gotten useful  
20 results. Maybe the clothes would have been too bloody to  
21 give us a reading of someone else's DNA.

22 Yet sure, sure, that's true but I asked about  
23 those clothes about the very condition of those clothes to  
24 people who saw them, not Mr. O'Connor who never saw the  
25 clothes. I asked Ms. Philipps -- you know, my one real

1 friend in this courtroom, Ms. Philipps -- about the  
2 underwear. She told us that some parts were bloody and some  
3 parts were not.

4 I asked Detective Dimuro about the condition of  
5 the clothes that he saw when he got to the crime scene.  
6 Remember? He said -- he described the sweat shirt as bloody  
7 while giving no such description of the other clothes  
8 Ms. Abbott was wearing. For God's sake, they even in 2011  
9 for who knows what reason do examine a piece of clothing.  
10 They examine a hat; a hat that was found in the living room.  
11 Maybe hoping to find Mark Richardson's DNA since he claims  
12 to have been in the living room before the violence  
13 occurred.

14 Fine. Good. Dandy. Do it. More power to you  
15 but yet why not examine the very clothes that were relevant  
16 to the case because these were recovered on the People's  
17 body. Who pulled down the underpants? Who grabbed at her  
18 bra and left her like that on the floor? Answer those  
19 questions and then ask for your verdict.

20 I am not asking that more be collected but that  
21 simply what's collected is dealt with appropriately. Look,  
22 everyone knows the lamp and the cord are critical to the  
23 case. The District Attorney's Office tells the OCME group,  
24 the forensic biology, that they think the cord was obviously  
25 used to strangle Ms. Abbott and the cord was obviously taken

1 from the lamp. We didn't need physical fit to show us that.  
2 We get it. Let's examine the cord and the lamp to find out  
3 who held the weapon.

4 I asked Crime Scene Detective Hernandez --  
5 remember weeks ago -- tell me about the cord when you got  
6 there. You could see it in the pictures. Parts of it were  
7 bloody and parts of it appeared not to be bloody. That's  
8 what he says. Listen, I get it. Parts were too bloody.  
9 The cord ends were swabbed and showed nothing of any  
10 relevance to this case and to this jury; but the cord  
11 mixtures showed a mixture of Ms. Abbott and a minor  
12 contributor.

13 Is it really so silly at that point to think about  
14 let's try again and see what else you could find? Is that a  
15 notion that deserves to be dismissed with Ms. Philipps --  
16 Ms. Philipps' expert testimony; and the plot only thickens  
17 when I inquire some more. Remember the questions I asked  
18 Ms. Philipps I believe she courteously answered?

19 If I get an object along with a swab, you want to  
20 process that swab in addition to doing your own? I think at  
21 some point she finally did say, yes, to that cause the first  
22 swab may have recorded the relevant DNA, right? You  
23 certainly wouldn't ignore it, right, because it could have  
24 the critical stuff, which a second swab would then miss; and  
25 I then asked if she didn't receive a swab with the cord --



1 cause we know that the cord did get swabbed by the medical  
2 examiner as he did the autopsy. Dimuro was present. He is  
3 the one guy who was present and assures us it did.

4 Not only did the medical examiner swab those  
5 breasts -- Dimuro assures us -- but there was another swab,  
6 a swab taken from the cord by the medical examiner. Why is  
7 it never taken down to the DNA lab? I don't know. Your  
8 guess is as good as mine, but I don't think the fact that it  
9 never made it down there, that it didn't exist.

10 Remember what Ms. Philipps said about the cord;  
11 that it had to be tracked down to find it. We had to send a  
12 detective after it because it hadn't been sent down with the  
13 rape kit. It was transferred, a routine bureaucratic  
14 transfer, and something gets lost in the shuffle. Something  
15 was a little awry and a critical swab gets lost in the move.

16 What do we say about that? We shouldn't expect  
17 too much from OCME, or just assume that the swab would have  
18 either said nothing or implicated Mark Richardson too or  
19 presented more proof of the acts of the third man. Giving  
20 us the results of the swab, that swab would ask for your  
21 verdict.

22 The lab itself seems to be in the middle of a  
23 farce. You heard it. The lamp was first dusted by Crime  
24 Scene for prints although we learned that dusting could  
25 actually destroy prints and that thing wasn't going to have

1 prints anyway. None was recovered.

2 After that, we then bring it to the Police Lab.  
3 By the time it arrives there, it is already broke. She,  
4 however, tries to dust it again now using super glue but  
5 knowing that this can destroy DNA swabs, swabs before, of  
6 course, we learn that swabbing for a touched item is a  
7 delicate operation best done by the special OCME swabs that  
8 Crime Scene apparently doesn't use, but they swab and get  
9 S-1 and S-2.

10 Again there is one part that's never swabbed  
11 because it's in an envelope. The thing then goes to OCME  
12 where it has now gone from four pieces in the bag to a  
13 mysterious ten. They are told listen, guys, we think  
14 someone either really held this. This is critical, so let's  
15 try again to swab it where it's held.

16 Of course, they are never shown a picture, which  
17 would have shown them where to look, what the lamp actually  
18 looked like when it was held back at the crime scene. More  
19 importantly and seriously, what do we do with Male Donor C  
20 whose male DNA was found under her nails?

21 You heard the evidence. What's under the nails  
22 can be terribly relevant. As a matter of fact you heard it  
23 argued both ways. Even this argument about how this piece  
24 of evidence sheds its own light on this matter. No doubt  
25 about one thing, that's one area of the body on which

1 special precautions are taken, obviously, precisely because  
2 this evidence may be crucial.

3 Nails are carefully scraped by the medical  
4 examiner. Three years later the work is finally done with  
5 the obvious hope on the part of someone that the work will  
6 finally prove that man's irrefutable guilt; but what's  
7 really critical -- subtle but critical -- is that they  
8 already know when that work was requested that there were no  
9 so called defensive wounds on that woman's hands.

10 I mean think about the chain of events here.  
11 Autopsy is done on January 14th, the day after this crime.  
12 Those pictures of her hands with no injuries on them are  
13 taken on that day; so it's already known back then that the  
14 state of her hands shows that she may not have been able to  
15 make a physical defense to the man or men who attacked her  
16 yet the analysis of the scrapings is done anyway three years  
17 after the crime because it's so critical to the case.

18 It's so critical that it's the one piece of  
19 evidence -- the one and only one that when regular DNA can't  
20 come up with a result is sent upstairs to the real  
21 specialized DNA folks; and then when the result doesn't  
22 support a conviction, an attempt is made in this courtroom  
23 to tell you that the result really has little relevance at  
24 all.

25 The DA asked the medical examiner, don't you often

1 see defensive wounds when someone is attacked? Yes, of  
2 course. And isn't the lack of injury consistent with  
3 someone not being able to fight back? Yes, of course. And,  
4 thus, we are told whatever is found under her nails probably  
5 did not come from the incident cause if it did, then she  
6 would probably have defensive wounds too because if she was  
7 clawing at the guy who attacked her, then we would expect  
8 she would also have wounds on her hands.

9 So who cares whose DNA is found under her nails?  
10 But they knew there were no wounds when that examination was  
11 ordered. Yet they ordered them anyway thinking it would  
12 provide relevant results. If the thought was that it might  
13 yield relevant evidence, why is an attempt made now in this  
14 courtroom to diminish the relevance of evidence when it  
15 yields unhelpful results for the very people who asked for  
16 the test.

17 And even here, you know, it's like with the broom.  
18 It is really like with the broom and the video clips. Its  
19 bigger, bigger than any piece of evidence alone. Again we  
20 are pushed to consider issues larger than just the piece of  
21 evidence. There is more at stake.

22 (Transcript continued on the next page.)  
23  
24  
25

## SUMMATION/DEFENSE

1 T-3 - Peo. V Mark Richardson, Ind.#3534/08

2 September 26, 2011:

3 MR. KLEIN: This is all we seen, just  
4 objectively presented, or have we been pushed to see evidence  
5 through a lens that tends to distort it all towards guilt?

6 The district attorney may tell you, it's really quite  
7 simple, this whole case isn't so complicated, just take Mark  
8 Richardson's own statement, just believe enough of it, and find  
9 a version of guilt about what he says, even though he may be  
10 hiding more, it must be at least as bad as he says, so just go  
11 with that and convict him based on his supposed true  
12 confession.

13 It's tempting. After all, after all he said, who  
14 would blame you if you convict him on what he uttered with his  
15 own story and we take an easy short cut, forget all the  
16 conflicting evidence, forget the sense, just go with the  
17 momentary suspicion of disbelief. Pass upon judgment  
18 concerning the fine mental implausibility of his narrative of  
19 his story and convict him simply on what he does say.

20 I guess, you know, doing that and using it to convict  
21 him would certainly be a good example of the concept of poetic  
22 justice. While I wouldn't dignify Mark Richardson's statement  
23 with that much reliability, perhaps the DA will and try to  
24 create a scenario of guilt based on Richardson's own words  
25 alone.

## SUMMATION/DEFENSE

1 But even there if you do that you are going to run  
2 into problems. The Judge is going to instruct, you think it's  
3 complicated, the Judge is going to instruct you on something  
4 called "affirmative defense" to felony murder and you will have  
5 to consider it if you want to credit Richardson's own words.  
6 If you want to believe what he says then you believe what he  
7 says. But on those words alone it doesn't appear that he  
8 participated in nor anticipated the violent attack and that's  
9 what the felony defense to felony murder basically discusses as  
10 the Judge will instruct you.

11 If you want to listen to his words, if you want to  
12 put credence into Mark Richardson's own words, God knows why  
13 you would, but if you do, then you will also have to consider  
14 the charge of Robbery in the First Degree that the Judge is  
15 also going to give you to consider the idea here being that  
16 maybe Richardson was acting alone in his attempt to steal Ms.  
17 Abbott's money.

18 I guess if you are going to listen to his words then  
19 you will listen to his words. He comes back into the kitchen  
20 during this ongoing dispute, not his dispute, a different  
21 dispute between Ms. Abbott and Anthony Hall, with Hall's  
22 behavior, witnessed by Johnny, Hall banged her in the frig,  
23 Richardson pushes them apart, magnanimous as he always is I'm  
24 sure, and takes what he believes as peace maker, just his own  
25 money.

Glenn J. Merola, Sr. Court Reporter

## SUMMATION/DEFENSE

1           In this account Ms. Abbott resists, Mark Richardson  
2 pushes her off, and that pushing her away turns a simple  
3 larcenous taking into a robbery, as some sort of physical force  
4 is employed.

5           Yeah, then Johnny jumps in, not Mark Richardson, as  
6 he's going out the door, not to assist Mark Richardson's  
7 attempt to flee with what Richardson thinks he has an able  
8 right to take. Johnny pushes her back so that he and Hall can  
9 continue their own escalating drug driven assault.

10           What can I tell you. I wouldn't credit Mark  
11 Richardson's words but if you want to I guess it's not right to  
12 pick and chose and then you convict him of Robbery in the Third  
13 Degree.

14           Listen, I'm done, and I know it's a very unsatisfying  
15 ending, and I hope I am not being presumptuous if I say that I  
16 have a vague sense of how you all must be feeling, my  
17 discussion of the evidence leaves us all in a very vulnerable  
18 spot.

19           I am not telling you my client is not guilty of a  
20 crime. Yet, I also think it would be inappropriate to even  
21 come close to conceding his guilt of these charges, not on this  
22 evidence. Because whose really so sure? Who knows what really  
23 went on in that house? What is it that Mark Richardson is  
24 truly guilty of?

25           But do we find a man not guilty and remain in the

SUMMATION/DEFENSE

1 dark? Do we not bring a definitive answer to the Abbott  
2 families justified need to know? Can we really endure that as  
3 a final conclusion?

4 And isn't the evidence here enough to show that Mark  
5 Richardson is probably guilty. Yet if he's probably guilty  
6 then maybe he's not. Do we acquit a man when that's where we  
7 come down at the end? Don't we follow our laws even in a  
8 matter of such utter destruction and deadly.

9 Thank you.

10 THE COURT: And thank you Mr. Klein.

11 Ladies and gentlemen, we'll take a short recess. You  
12 have been sitting there for awhile but then we'll get to Mr.  
13 Bogdanos. I am going to ask all of you to step outside for a  
14 few minutes. Please do not discuss the case. Thank you.

15 (The jury is excused and exits the courtroom.)

16 (Short break was taken.)

17 THE COURT: Okay, both sides ready?

18 MR. BOGDANOS: Yes.

19 MR. KLEIN: Yes.

20 THE COURT: May we have the jury, please.

21 (The jury enters the courtroom.)

22 THE COURT CLERK: Case on trial continues. All  
23 parties are present. The defendant is present. Jurors are  
24 present.

25 THE COURT: Thank you very much.

Glenn J. Merola, Sr. Court Reporter



SUMMATION/PEOPLE

1 Ladies and gentlemen, Mr. Bogdanos is next. For  
2 obvious reasons I would like to go past the one o'clock hour if  
3 necessary so that we can finish his summation but then take a  
4 break for lunch and after lunch we'll have the charge.

5 So, Mr. Bogdanos, the floor is yours.

6 MR. BOGDANOS: Thank you.

7 Not precisely when. But who? Not exactly where.

8 But who? Not even particularly how many, two or three, but  
9 who? And, ultimately, not even exactly how, but who?

10 If mark Richardson had Helen Abbott in a choke hold  
11 while other, or others, stabbed and searched for money, he's  
12 guilty of the charges in the indictment.

13 If Mark Richardson searched for money while others,  
14 or other, or others, choked and stabbed, Mark Richardson is  
15 guilty of all the charges.

16 And if Mark Richardson stabbed, while Anthony Hall  
17 searched, and Male Donor C choked, well then, Mark Richardson  
18 is guilty of all of the charges.

19 It is just that simple. And simply because we're in  
20 a court room, and we have a prosecutor, and a defense attorney,  
21 and a Judge, and a court reporter, doesn't mean it has to be  
22 more difficult.

23 It doesn't mean you have to engage in any arcane  
24 processes and take out every possible outcome. It doesn't mean  
25 you have to adopt any kind of process that you don't use in

SUMMATION/PEOPLE

1 your daily lives.

2 I asked you at the beginning, and I ask you now, when  
3 you come into this courtroom, bring your common sense, your  
4 knowledge of the world, and your fundamental decency to bear.

5 Nothing has changed. But in order for the case to be  
6 as simple, as I submit to you it is, as we walk through the  
7 evidence there is a catch, a secret if you will, you must rely  
8 on the evidence and what you may reasonably infer from the  
9 evidence, on that, and on nothing else.

10 You must set aside all manner of irrelevancies that  
11 have nothing to do with the evidence. Speculation, conjecture,  
12 have no place in the jury deliberation room.

13 Well, what would have happened if such had been  
14 done? And where would we have gone? And who would have  
15 known? And how big would that person have been? These are all  
16 inappropriate questions. What ifs.

17 Every time in the jury deliberation room a fellow  
18 jurors says: What if? You're doing a disservice to your oath  
19 and to the system. So I urge you to follow your oaths, your  
20 conscience, and your duty, and do exactly what you told us that  
21 you would do, which is follow the evidence and what you may  
22 reasonably infer from the evidence.

23 I stress this up front because there are really two  
24 ways you could approach this case. The first, and certainly  
25 the easiest, is we're never going to find out what exactly

## SUMMATION/PEOPLE

1 happened in apartment 12E on January 11th.

2           It's just to complicated, to difficult, and so you  
3 could just say, since I can't find out everything, I don't have  
4 enough. And you could go back and you could talk among  
5 yourselves and you could say, yeah, you know, Mr. Klein is  
6 right, he's probably guilty.

7           But probably isn't enough. I mean I wanted to  
8 convict but it's not enough because I wanted the DA to have  
9 more. I wanted more.

10           Okay. That's fair. What would more be? I am  
11 curious, what would that more be? This is murder! The only  
12 witness is dead! That's how it works in murder. You kill the  
13 witness. That's what happened here.

14           And, so, if you require some kind of clarity as to  
15 precisely what happened in that apartment, and how it happened,  
16 aren't you, in effect saying, well, I guess that's just the way  
17 it is with murder.

18           Aren't you, in effect, changing the law? Aren't you,  
19 in effect, changing the burden of proof? Aren't you, in  
20 effect, rewarding those who commit sexual abuse, or those who  
21 commit robbery, and have the good presence of mind to kill the  
22 only non participants, haven't you just said, well, there you  
23 go, there's the perfect crime, kill the only non participant in  
24 the sexual abuse or robbery.

25           I will assume, of course, that you will not do that

## SUMMATION/PEOPLE

1 in this case because you promised you wouldn't. You promised  
2 you would follow your oaths and you would require the People,  
3 put the People to the burden of proof, of proving beyond a  
4 reasonable doubt.

5 And, ultimately, if you look at it all, as Mr. Klein  
6 has indicated, there are five charges in the indictment, his  
7 Honor is going to read you the charges, not my place to do so,  
8 but you have already heard them.

9 Briefly, it's Sexual Abuse in the First Degree, two  
10 counts of Robbery, Robbery in the First Degree and then Robbery  
11 in the Second Degree, you will also hear about Robbery in the  
12 Third Degree and, finally, Murder in the Second Degree, felony  
13 murder, as Mr. Klein accurately stated.

14 I submit to you that there is a fundamental way of  
15 addressing the case you have before you and given the posture  
16 of the case and the nature of the charges and the nature of the  
17 events here, really there are three questions that I submit to  
18 you need to be asked and answered.

19 And the first question is, did the defendant, acting  
20 alone or with others, commit Sexual Abuse in the First Degree.  
21 In other words, did he subject Helen Abbott to sexual contact  
22 by forcible compulsion. Did he touch an intimate part of her  
23 body without her consent by force.

24 Well, we know that he touched her. We have his DNA  
25 on her left breast. We have either saliva or sweat on her left

## SUMMATION/PEOPLE

1 breast. Mr. -- So that's a done deal. We got the sexual  
2 contact. So now the only question is: Was it by forcible  
3 compulsion.

4 Mr. Klein would you have you speculate: Well, just  
5 maybe, umm, it was consensual sex going on between Ms. Abbott.

6 And Mr. Klein -- Really? Really? You know I read  
7 every page of the transcript over the weekend. I couldn't find  
8 a single page, not a single question, not a single iota, not a  
9 single scintilla of evidence suggesting that there was anything  
10 consensual about Helen Abbott's life ending sexual encounter.

11 What about this strikes anyone as -- Yes, I'm sorry,  
12 I told you before this isn't social work -- What about this  
13 strikes anyone as anything as consensual? How is this  
14 consensual? How does this not speak volumes about forcible  
15 compulsion?

16 So, let us put aside speculation and conjecture of  
17 about, perhaps, maybe, I think, it could be, possibly, that  
18 they had sex and it was consensual. The evidence tells you  
19 otherwise. The evidence tells you that there was nothing  
20 consensual about this.

21 So, frankly, the Sexual Abuse in the First Degree,  
22 straight forward. I submit to you that the evidence on sexual  
23 abuse you needn't spend a whole lot of time on that. You have  
24 it. You have it before you in unmistakable detail and  
25 uncontradictable detail.

## SUMMATION/PEOPLE

1           And in order to consider the crime of Sexual Abuse in  
2 the First Degree, consider also the condition of her body was  
3 in. But then, again, don't speculate, don't speculate why her  
4 pants were pulled down and her panties were pulled down. And  
5 don't speculate as to the semen stain, N1, that was next to her  
6 body. Don't speculate about whether it got next to her naked  
7 body before she died, while she was dying, or after she died.

8           Because I said, I submit to you, that this charge is  
9 really straight forward. So that's the first question, if you  
10 will, I submit, in addressing the charges.

11           The second question you should ask yourselves, again,  
12 I submit is, did the defendant, acting alone or with others,  
13 forcibly take money from Helen Abbott? That's it. Just that  
14 simple. Did he do that. Did he forcibly take money from her?

15           What does the evidence show? We'll cover it in more  
16 detail. But consider his own words in that regard and bring  
17 your knowledge of the world to bear on why Hall was banging Ms.  
18 Abbott against the refrigerator. Why the defendant got up in  
19 the middle of this assault to say: Yo, where's my money. And  
20 ultimately he takes the money while this assault is going on.  
21 Done. Finished. Over. Done. Done. Robbery Second Degree,  
22 Done. Done. That is Robbery Second Degree. Guilty.

23           And then the third question. Was Ms. Abbott killed  
24 during, and furtherance of, and during the course of either the  
25 sexual abuse, this forcible touching, or the robbery. No

## SUMMATION/PEOPLE

1 matter which one of them killed her, we should be abundantly  
2 clear on this, his Honor will give you the instructions on  
3 this, if the defendant committed the robbery, or the sexual  
4 abuse, and anyone in that room killed her in furtherance of  
5 that, or immediately thereafter, as Mr. Klein accurately  
6 stated, then he's guilty of felony murder.

7 Well, what do you know? She's dead. And you also  
8 know she died during the taking. More on that in a moment.  
9 But we know there's no time pass between the taking and the  
10 death. You know that from the M.E. who told you all the  
11 injuries are within minutes of each other.

12 So, you know that she's dead, immediately after or  
13 during the taking of her property and so all of those  
14 individuals in that apartment, two or three, are guilty of  
15 felony murder.

16 And to see how truly straight forward, I don't mean  
17 in any way to over simplify the case, but I am just offering a  
18 different way of looking at the case so that you don't have to  
19 struggle with the sheer volume of the information.

20 And to see how straight forward it is, let's go on a  
21 journey together, and let me show you twelve facts that are  
22 uncontradictable, not capable of being contradicted. Twelve  
23 facts that have been proven throughout the course of this trial  
24 that show you why the answer to each of those questions is yes  
25 and why the ultimate answer is guilty as to all the charges.

## SUMMATION/PEOPLE

1           And I know this was a long and often tedious and  
2   cumbersome trial and surely there were times you felt like the  
3   guy who asked your friend: What time is it? And your friend  
4   started telling you how to build a watch.

5           I know I gave you more DNA and telephone records and  
6   video then you could have possibly have wanted or expected.  
7   But now that we built the watch together let me tell you what  
8   time it is. Because we know where he was and we know what he  
9   did.

10           So let's start with the first incontrovertible fact  
11   and that is the video. The VIPER video that lays out the time  
12   and as you consider the time let's do this backward for a  
13   moment. We know which time the defendant is talking about.  
14   Mr. Klein would have you speculate, humm, maybe he was talking  
15   about December, and maybe he was talking about January 10th.  
16   No. He was talking about the time he left the building and let  
17   two blue coats, uniformed officers, into the building.

18           How do we know that? Because it's on video. And  
19   when is that? 4:50 on the afternoon of January 11th. So we  
20   know when the events that Mr. Richardson are talking about  
21   occurred. They occurred ending at 4:50 when he walks outside,  
22   opened the door, and let two uniformed officers in. That's  
23   when it happened.

24           Continuing to move back. Just for a moment. When  
25   did she die? She was already dead. She was already dead at



## SUMMATION/PEOPLE

1 that point. Even by his own words. Because she was stabbed.  
2 And we know from the medical examiner she could not have lived  
3 more than a minute or two after the initial stabbing. No sign  
4 of healing. All of those wounds were, remember his  
5 word, peri-mortem, with in one to two minutes of death, the  
6 first wound to the last wound was one to two minutes of death.  
7 So we know when she died. She died Friday afternoon.

8 We know what he's talking about in his videotape  
9 statement. He's talking about Friday afternoon. Not some  
10 imaginary unicorn, like Alice through the looking glass, humm,  
11 December, January, other time frame, this time frame. January  
12 11th.

13 And what do we know? He enters at about 12:50 with  
14 three people on that Friday morning, Anthony Hall and two  
15 others, unidentified, never been identified to this date. When  
16 he comes in what does he have in his hand? A paper bag. And  
17 nothing else. And, yes, defense is absolutely right, he was  
18 jacked up, he was jacked throughout the course of that time on  
19 the video.

20 What do we know about the rest of the day? We know  
21 that four different times he gets off the elevator at twelve  
22 and turns to the right. Well, let's look at twelve. Gets off  
23 the elevator, turns to the right, yeah, that would be Helen  
24 Abbott's apartment.

25 So we know that he at least turned to go to Helen --

## SUMMATION/PEOPLE

1 in the direction of Helen Abbott's apartment four times. How  
2 many times did he get in? We don't know that. We don't know  
3 that. The 2:15 was the first -- wasn't the first time that he  
4 got in. Right? We should be clear on this. He got off the  
5 elevator four times on twelve throughout the course of the day  
6 but we don't not about how often he got into the apartment.

7 Except, that he did tell us, that would be one time  
8 and we'll show you that in just a moment. But then he gets off  
9 on each occasion at eleven. Three times he gets off, gets back  
10 on the elevator, eleven. One time you can't tell whether it's  
11 eleven or twelve.

12 And how do we know that that date is the first time  
13 he had ever been to that apartment? How do we know that --  
14 how are we absolutely sure that that is the first time, that  
15 Friday, just before he sees the police officers at the door,  
16 the visit prior to that, is the first time he's ever been in  
17 the apartment and the first time he's ever met Helen Abbott?

18 Play the Q&A please. At 18 hours 22 minutes and 20  
19 seconds into the Q&A. Listen.

20 (Videotape being played.)

21 (Videotape stopped.)

22 MR. BOGDANOS: He's introduced that night. The  
23 night he let's the police officers in, Friday, after January  
24 11th, he's met Helen Abbott for the first time. So all this  
25 other speculation about prior events, about prior meetings,

## SUMMATION/PEOPLE

1 about prior sexual contact, not only is it abject gross  
2 unadulterated, unmitigated speculation, it's false. He met  
3 Helen Abbott that night.

4 So, whatever evidence he left in that apartment,  
5 whatever witnesses he left to his presence, he left that Friday  
6 afternoon. And so what are, what witnesses did remain in the  
7 apartment after he killed Helen Abbott?

8 Well, the prints on the broom are the second  
9 uncontrovertible fact. He left his palm print on the broom.  
10 It's the defendant's palm print. His right palm. Had to be  
11 that Friday. Never been in the apartment before. It's on the  
12 bed next to Helen Abbott's dead body.

13 Remember, it's a clean print, no smudge, no double  
14 tap. He's the last person to touch that broom. It's on the  
15 bed next to her body. The bed is made. Whatever the apartment  
16 was looking like that bed was made. You will see in People's  
17 24 the bed is made. It's a little -- the cover is pulled down  
18 because that's actually Ms. Abbott's body that has pulled down  
19 the cover. But look at it. It's made.

20 So, whoever was sleeping there was doing this before  
21 the defendant put the broom on the bed. Before the defendant  
22 used the broom in the bedroom on Friday, January 11th, right  
23 before she died.

24 No. He wasn't using it to mop up the blood. There's  
25 no blood on it. But there are injuries on her body that are

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1 consistent with this having been used.

2 We know where he was and we know what he did.

3 Moving to the third uncontrovertible fact. It is his  
4 sweat or saliva on here naked breast. Again, had to be left  
5 that Friday. Never been there before. And, yes, now the  
6 numbers, in order for it to be someone else you need three  
7 planets, 1 in 18 billion, minimum number is 1 in 18 billion.  
8 So it's the defendant. It's the defendant's saliva or sweat on  
9 her breast. Uncontrovertible.

10 Now, defense argues, well, yeah, but there is also  
11 DNA on the right breast and we don't know who that was. Humm.  
12 Actually, it's not that you don't know who it is -- don't  
13 speculate. Page 541 of the transcript.

14 "Question: Cross examination by Mr. Klein. "With  
15 regard to PM2C4, the secretion on the right breast, is  
16 consistent with Helen Abbott -- your results did not simply  
17 state that the results of PM2C4 were consistent with the DNA of  
18 Helen Abbott, did they?"

19 "No. The DNA on PM2C4, the right breast, is  
20 consistent with Helen Abbott, a minor contributor, but there  
21 wasn't enough information from the minor contributor to make a  
22 comparison to who could have contributed to that DNA."

23 Apparently he accident like the answer because he  
24 asked it three more times, word for word, and the fourth  
25 time: "There was a mixture of DNA on Helen Abbott's right

## SUMMATION/PEOPLE

1 breast it was Helen Abbott and another individual but there is  
2 not enough information present in the mixture in order for us  
3 to make a comparison."

4 So it isn't that it wasn't tested. There wasn't  
5 enough DNA to establish a profile on the right breast. No idea  
6 whose it is. You can't speculate on that.

7 We do not know whose DNA is on the left breast. Four,  
8 there is a semen stain, stain N1, for which Helen Abbott, Male  
9 B and the defendant's are included. Unlike the other semen on  
10 the bed in that room, that appeared to have at least been  
11 fresh.

12 How can the evidence suggest that? Again, the bed is  
13 made and the semen that was found on the bed was on sheets and  
14 on blankets that were folded up. But this one was on the  
15 floor. Clearly suggesting that it had been deposited another  
16 time or certainly more recently than the bed had been made. N1  
17 was, in fact, inches from the naked body of Helen Abbott on the  
18 floor.

19 Cheryl Abbott, when she found her mother's body,  
20 thank God that her mother didn't appear to have been raped  
21 before the murder but semen on the floor, the condition of  
22 Helen Abbott's body, and clothing, the defendant's saliva and  
23 sweat or sweat on her breast and another man's DNA under her  
24 fingernails.

25 We can only shudder at how that semen was deposited

SUMMATION/PEOPLE

1 there. Whether it was, again, before, during, or after the  
2 murder.

3 (Continued on next page.)

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Glenn J. Merola, Sr. Court Reporter

1 MR. BOGDANOS: And indeed were the murder itself  
2 any less horrific, perhaps, there would be enough emotion  
3 left to pause on that stain, N-1, but instead we move on;  
4 and we do so because we know where he was; and we know what  
5 he did and so we come to five, the phone Mr. Klein would  
6 have you believe the phone means nothing.

7 The evidence strongly suggests otherwise and what  
8 does the evidence show? The defendant enters the building  
9 the fourth time that day at 2:15 p.m. This is actually the  
10 first time that there is any evidence that he is in the  
11 apartment because he is using her phone. Now he enters at  
12 2:15. Gets off at 12. Turns to the right as always; and  
13 then there are a series of calls, twenty-one calls  
14 altogether. Two of those phone calls you heard are  
15 unrecorded. They come up with unknown or the word empty.

16 Sprint just didn't catch those numbers but they  
17 are clearly phone calls. You remember from the expert it  
18 just didn't record those numbers; so you have twenty-one  
19 calls. Two of them are unrecorded so put them aside. You  
20 have nineteen left. Of those nineteen, eighteen are made to  
21 the defendant's family. Remember, the eighteen that are  
22 made to the family are minutes -- according to the  
23 defendant -- are at least a period of time after she's been  
24 murdered.

25 Here is 4:50 when he walks out and sees the police

1 officers, so they are all -- these calls are before that.  
2 Eighteen calls to his family. Is that really surprising?  
3 Who would you call if you were in a jam? But the defense  
4 says, well, how can you explain the 7267 number, the  
5 (347) 992-7267, the Juan Pello Perez? You heard evidence  
6 that person doesn't exist. It is a fake name. Whoever it  
7 is has a boost phone; one of those prepaid phones you heard  
8 about.

9 Well, that person is right in the middle of all  
10 these calls to the defendant's family and that particular  
11 phone number is a phone number that appears on  
12 Helen Abbott's phone records prior to that date. You also  
13 heard however that the defendant was living with  
14 Desiree Allen at this time.

15 Please play 18:55:55.

16 (Videotape commenced playing.)

17 (Videotape stopped playing.)

18 MR. BOGDANOS: So we know he is living with  
19 Desiree Allen at the time. You have Desiree Allen's  
20 telephone records in Evidence. This number (347) 992-7267  
21 shows up on Desiree's Allen phone records 24 times in the  
22 month of -- from January 1st to January 10th and then most  
23 tellingly, ten times after Helen Abbott is dead; so the  
24 defense suggests that this number must be connected to  
25 Helen Abbott.



1           That's nice. The evidence suggests otherwise.  
2           The evidence suggests that this number is connected like all  
3           the other numbers that are called is connected to the  
4           defendant. She still gets calls after she is dead. It is  
5           People's -- for the record -- No. 39 in Evidence; and so  
6           every single phone call -- and you might be saying to  
7           yourself well, would you? Nineteen phone calls? That's a  
8           frantic -- that's the word you are looking for -- frantic.  
9           That's the word, frantic.

10           Nineteen phone calls and repeatedly 325, 326, 327,  
11           329, 331, frantic. How would you be if you just killed  
12           someone? Frantic might be one of those words. In the  
13           context of this case, frantic has another word, guilty; and  
14           then let's look at this last call, the 4:59 call.

15           This call is after the defendant has left the  
16           building; after he has let the police officers into the  
17           front of the building. 4:59, well, so he is outside the  
18           building. Do we have any evidence that the phone is outside  
19           the building? Go to People's 86 and what do you notice  
20           about the 4:59 call? There is no technology that exists  
21           that can pinpoint the exact location of a telephone. You  
22           heard that from the expert. That doesn't exist in real  
23           life; but let's look at all the telephone calls that are  
24           made from 2:58 on.

25           You notice that each and everyone of those calls

1 either originates, starts or terminates, ends at the 126th  
2 cell site, right? Some of them bounce out. There is some  
3 overuse across the river and some of them bounce to 124th,  
4 and some of them bounce over to Madison Avenue; and the  
5 engineer explained that's what he would expect to see high  
6 peak time, Friday afternoon, when calls are made, and that  
7 cell site appears to have been overloaded so the calls  
8 bounced.

9 What's the only call that doesn't do that? The  
10 4:59 call. The 4:59 call starts and ends on 119th Street  
11 cell site. What could possibly explain that? What could  
12 possibly explain that the phone is using a completely  
13 different cell site from the rest of the day?

14 We know where he was and we know what he did, and  
15 this occasion we know what he took with him when he left the  
16 room. We know that's one of the things that was in that  
17 plastic bag and that is Helen Abbott's phone continuing to  
18 make a phone call from Helen Abbott's phone after he left  
19 the building.

20 Six, you know as you have seen on the video that  
21 the defendant leaves at 4:50 that afternoon.

22 Go to clip 73, please.

23 (Videotape commenced playing.)

24 MR. BOGDANOS: He opens the door for the police  
25 and let's them in. Surely as you were looking at that and

1 as you are about to look at just this one clip now, you may  
2 have been thinking to yourself, well, he sure doesn't look  
3 like some one who has just murdered somebody. Of course,  
4 the question I would have for you if that's the thought, if,  
5 what does somebody who murdered someone look like exactly?

6 Backup for a minute.

7 (Videotape still playing.)

8 MR. BOGDANOS: There is that bag never seen  
9 before. There are the police officers.

10 Pause.

11 (Videotape stopped playing.)

12 MR. BOGDANOS: So since I don't think anyone has  
13 ever figured out what a murderer already looks like or  
14 someone who just murdered someone would look like, what does  
15 he look like? Certainly an argument can be made is he looks  
16 like someone who thinks he could get away with it.

17 I would submit to you only if you let him. And  
18 where -- what's in the bag? Where does it come from? Well,  
19 he's only got one hand on the bag because the other hand as  
20 you know from having watched the video is he is wiping his  
21 face, wiping his face with his entire shirt; wiping a face  
22 drenched in sweat; and surely one of the questions you  
23 should be asking yourselves is, oh, this is January. It's  
24 about in the 40's that day.

25 What could he possibly have been doing that would

1 have caused him to sweat so much that he would have needed  
2 to use his shirt to dry his face? What happened on 12 that  
3 made him sweat?

4 We know where he was and we know what he did, and  
5 so now let's look at what he did and that's, seven, the  
6 condition of the body. This was a serious, major league  
7 brutal beating. There is no other way to describe it. You  
8 have seven fractured ribs. Six fractured ribs. One is  
9 fractured in two places.

10 Those seven, seven fractures on the ribs had to  
11 have been done with a blunt forced instrument, a nonsharp  
12 instrument. A broom will do nicely for that on a 69 year  
13 old woman with arthritis.

14 There were also three additional blunt force  
15 traumas to the head. There was also in the autopsy you will  
16 see bleeding on the brain. Her brain was hemorrhaging. She  
17 was struck so hard in the head that her brain was bleeding.  
18 Surely, that took a tremendous amount of force on this  
19 woman. You'd have to be pretty big to generate that much  
20 force. Six seven (6'7"), three hundred (300) ought to just  
21 about do it. Ought to be enough to generate just enough  
22 force when you are 6'7", 300 on a five foot five (5'5"), one  
23 hundred twenty (120) pounds. Generate enough force to get  
24 bleeding on the brain and as you heard twenty-two (22) stab  
25 wounds; all but three on the left side generally left to

1 right indicating that the individual was facing her; someone  
2 using their right hand to come across.

3 Seven, as you know would have been fatal if given  
4 enough time but again there wasn't enough time because the  
5 ligature strangulation, the electrical cord stopped the  
6 heart from beating, killed her before the heart beat enough  
7 for blood to enter the lungs or the stomach in any capacity.  
8 What does that mean? As we said before, the first time from  
9 the very first stabbing to -- to her death one to two  
10 minutes.

11 You also know that there were injuries on her neck  
12 particularly on the left side that were -- appeared to be in  
13 addition to or consistent with something in addition to the  
14 ligature, a choke, a choke in which the right arm is put  
15 over the neck and the radial bone of the forearm is pressed  
16 against the neck.

17 The bottom line for all of this is that this was a  
18 lot to be done in one to two minutes. Not a one person job.  
19 No, in fact, the violence in this case -- and indeed the  
20 word overkill could surely had been invented for this case.  
21 If the word overkill didn't invent -- didn't exist before  
22 January 11th, it would now. Overkill by multiple people.  
23 Not possible for one person to have done all of this damage  
24 in that short amount of time.

25 Remember the wounds are ligature is from the back;

1 the choke is from the back; the stabbing is from the front;  
2 and whatever happened, she had to have been restrained in  
3 some fashion whether it was because when she was choked, she  
4 was unconscious as the medical examiner indicated was a  
5 possibility; or whether it was because the clothing was  
6 pulled up and that pinned her arms.

7           Whatever the mechanism was she had to have been  
8 restrained during the stabbing because there were no  
9 defensive wounds on her hands, front or back. No incised  
10 wounds. No slashings. Nothing.

11           This had to be at least one person, two or three.  
12 Whatever it was this was a team effort. Whatever this was  
13 this was all in. Whatever this was, a drug induced frenzy.  
14 Whatever it was, this was everybody making sure there is no  
15 witness left alive.

16           Then you come to nine, the electrical cord. You  
17 remember, the cord was cut from a lamp that was in the  
18 living room. Remember also the timing of the events. The  
19 cord had to be used within a minute or two of the first  
20 stabbing; meaning the evidence strongly suggests the cord  
21 had to have been cut before the first stabbing. Not enough  
22 time.

23           Look at the apartment diagram and look at the  
24 layout of the apartment. The lamp from which the cord was  
25 cut was in the living room. She was killed in the bedroom

1 all the way down in the back; and you know there is no  
2 evidence of blood anywhere whatsoever in the apartment. Two  
3 different Crime Scene Units went to that location. You  
4 remember they did ultraviolet light. They did -- whatever  
5 that purple spray is called. Can't remember -- leukocrystal  
6 and there was no blood anywhere else in the apartment; so  
7 you know the blood, the stabbings that caused the blood, the  
8 jugular, aorta had to take place in the bedroom.

9 That's -- the evidence is clear on this; but the  
10 cord was cut in the living room. The cord had to be cut  
11 before the first stabbing. Who was in the living room? Who  
12 was in the living room? Who was alone in the living room?  
13 Who was alone in the living room while they were beefing  
14 momma. Where is the money, momma? Where is the money?

15 While Anthony Hall is saying momma, where is the  
16 money, who is alone in the living room? Oh, yeah,  
17 Mark Richardson. Mark Richardson is alone in the living  
18 room; while everyone else is in the bedroom beefing, give me  
19 the money. Give me the money.

20 And what do we know about the cord? Well, let's  
21 take a look at the cord. We know that a pair of scissors is  
22 in play here. We know that a pair of scissors -- it is  
23 not -- we know from the medical examiner that they are  
24 paired wounds. Paired wounds that appear to be shaped  
25 exactly like scissors and appear to have two prongs. Not

1 consistent with a fork. Consistent with scissors.

2 Obviously, we don't have the scissors because we  
3 know why we don't have the scissors, but we will come to  
4 that in a moment. Well, did you ever try to cut a thick  
5 cardboard with a pair of scissors? You know how when you  
6 cut a piece of thick cardboard, you start cutting and then  
7 halfway through you continue cutting, and it has like a gap  
8 in it or a place where it is not straight across but where  
9 it just sorts of moves out.

10 Pretty much exactly like this. Exactly what you  
11 see in the cut of the electrical cord. Pretty much exactly  
12 that way and so it is fair to conclude from this evidence  
13 that the scissors were used to cut the cord. Scissors were  
14 used to murder Helen Abbott. The cord -- let's do this --  
15 let's do some logic. Scissors were used to cut the cord.  
16 The cord was cut in the living room. Mark Richardson was  
17 sitting in the living room alone.

18 What would that conclusion be? What may you  
19 reasonably infer from the evidence to that? Mark Richardson  
20 cut the cord. Mark Richardson had the scissors.

21 Next, the clothing of Ms. Abbott, we know that the  
22 clothing was pulled up before the stabbing. Had to be.  
23 There is no holes in the clothing. Well, that's right  
24 because they were looking for the money and it seems clear  
25 on this evidence that whatever money she had in her bra, it



1 just wasn't enough and so the frenzy continued.

2 Where is the rest of the money? Where is the rest  
3 of it? They already used a broom. It is not working. The  
4 broom isn't scaring her enough. The broom gets discarded on  
5 the bed. Where is the rest of the money? Don't make me use  
6 the cord. Where is the rest of the money as they pull her  
7 shirt up if she hid money in the bra or maybe elsewhere; and  
8 they pull her pants down or force her to pull her own pants  
9 down to prove that she doesn't have anymore money.

10 Next, the false alibi, the defendant is  
11 interviewed on February 5th in connection with the murder of  
12 Helen Abbott; and the very next day, February 6th, he goes  
13 to his supervisor and asks his supervisor to write a letter  
14 saying he was at work all day on the eleventh and had some  
15 counseling on the tenth.

16 Well, we know he wasn't working on the eleventh  
17 not just from the video but his supervisor actually  
18 testified and said, no, that was false. That was a lie. He  
19 wasn't working on January 11th. Why would he lie about  
20 that? Defense would have you believe it is just what he  
21 does.

22 It's what you do when you are guilty. It is  
23 called consciousness of guilt. In fact, it's so well-known,  
24 so prevalent there is a word for it, a phrase for it;  
25 consciousness of guilt. His Honor will instruct you on how

1 you could use this as consciousness of his own guilt. He  
2 knows he's guilty. He tries to come up with a false alibi;  
3 and by virtue of the false alibi, that is one more piece of  
4 evidence indicating his guilt and on the -- on the  
5 consciousness of guilt, let's go to twelve, the existence of  
6 the telephone.

7 Defense would have you believe as we talked about  
8 the phone meant nothing. Well, it sure did mean something  
9 to the person who took it. Of all the people in the world  
10 who knew that the phone meant something?

11 You could get fingerprints off the phone. You  
12 could get DNA. Of all the people in the world who knew that  
13 the phone had relevance? The person who took it. The  
14 person who took it from the dead woman. Well, so who has  
15 the greatest incentive to lie about the existence of a  
16 phone? The person who took it from the dead woman,  
17 Mark Richardson.

18 You know where he was and you know what he did;  
19 and so defense would call this a stupid lie. The law calls  
20 it consciousness of guilt, conscience of one's own guilt of  
21 the crimes.

22 Now against these uncontroverted facts, the  
23 defense argues, well, there is an affirmative defense of  
24 felony murder. The defendant was just sitting there merely  
25 present while these other people murdered her. Sure, he did

1 the robbery. Got the money so he is guilty of the robbery;  
2 but not the murder because he is just merely present  
3 standing there while they -- they murder her for their own  
4 purposes.

5 His Honor will instruct you -- not my place, not  
6 my job -- but when his Honor does instruct you in a moment  
7 when we talk about this, under 125.25 Subsection 3A, in  
8 order for the defendant to get the affirmative defense of --  
9 to the crime of felony murder, he has to prove to you -- he  
10 has to prove to you by a preponderance of the evidence that  
11 he did not in any way solicit, request, command, importune,  
12 cause, or aid the commission of the murder.

13 Let's count how many times he actually solicited,  
14 commanded, and importuned and aided the commission of the  
15 murder as we walk through his statement. Defense would also  
16 argue, well, they should have tested the cord. They should  
17 have tested the cord because if they tested the cord maybe  
18 perhaps, probably, pretty sure you could speculate there  
19 might be some conjecture that the real killer's DNA will be  
20 on that. Really? Really?

21 Page 563, cross of Ms. Philipps, why wasn't the  
22 cord further tested? The cord was analyzed and there was  
23 blood found on it and when it went for DNA typing, the DNA  
24 was consistent with Helen Abbott and there was a minor  
25 source; but again there wasn't enough information for

1 further comparison. That's not enough.

2 Page 574. In the cord's center we were able --  
3 still cross of Ms. Philipps -- in the cord's center we were  
4 able to develop a DNA profile that was consistent with  
5 Helen Abbott but there was also a possible minor  
6 contributor; and there wasn't enough information in order  
7 for us to make a DNA comparison to the possible minor  
8 contributor. Not enough.

9 Let's ask it again. 631, Mr. O'Connor; so,  
10 Mr. O'Connor even if it were sent, even if the cord, the  
11 swabs from the cord were sent for High Sensitivity testing,  
12 it would be expected that the DNA from the blood would  
13 overwhelm any DNA that would have come from the few skin  
14 cells that may or may not had been on the cord itself?

15 There is a reason the swabs weren't further  
16 tested. There was not enough. They told you that  
17 repeatedly. The lamp, lamp should have been swabbed.  
18 Actually, yeah, the lamp should have been swabbed more.  
19 Page 650 -- how many swabs were there altogether -- cross of  
20 Mr. O'Connor, four swabs were used from the body, two were  
21 then collected from the neck, and three swabs from the base.  
22 That's four, two -- that's nine swabs from the lamp, none of  
23 which yielded sufficient DNA; but the pieces were broken.  
24 Surely that mattered, meaning the pieces, the pieces were  
25 broken that somehow affected the integrity of the testing.

1 Cross of Mr. O'Connor -- it says cross -- you have  
2 broken pieces from that exact lamp. You could still take a  
3 swab, correct? Correct. You could take a swab from the  
4 pieces. Is the fact that it is broken change the ability to  
5 develop a DNA profile from the lamp? No. Weren't there  
6 more swabs taken from the lamp even before it was broken  
7 anyway?

8 Page 864, Amy Dorsey, you will forgive me for  
9 spending too much time on this issue, but I don't want this  
10 to distract you. The lamp was tested. There was no DNA  
11 sufficient to determine who, in fact, touched the lamp.

12 864, Ms. Dorsey, swab 1 for the record is the  
13 metal portion at the base; swab 2 is from the glass at the  
14 bottom. No prints. No DNA from the lamp. Insufficient DNA  
15 from the cord.

16 Now let's turn finally to the defendant's  
17 statement. As I said the defense has already suggested that  
18 the defendant was merely present and the mere presence after  
19 he does his own robbery makes him guilty of robbery but not  
20 murder. I imagine the argument continues, well, those other  
21 two must have killed -- but they must have killed her for  
22 their own reasons. It was just a coincidence that we were  
23 all there together. We were all using force together and;  
24 therefore, I don't know why they killed her but they killed  
25 her for some other reason; and I am not guilty of murder.

1           Okay, here is what you have to accept in order to  
2           accept that argument. What is the defendant's -- what is  
3           the version of the story that supports that argument of mere  
4           presence? Defendant saw the money and the shirt and took it  
5           gingerly, of course. It happened to be the \$30 that Hall  
6           owed to the defendant. This five foot five, one hundred  
7           twenty pound woman that grabbed the defendant's shirt, he is  
8           wearing a shirt right underneath the jacket? Yeah.

9           She grabs his shirt in the kitchen where this  
10          happens. You remember, it happens in the kitchen.  
11          According to the defendant the kitchen is so full of good  
12          samaritans that two men leap to the defense of a six seven,  
13          three hundred pound Mark Richardson and defends himself  
14          against a 69 year old arthritic Helen Abbott.

15          Johnny grabs her around the neck and Anthony Hall  
16          begins stabbing her in the chest, and he sees her shirt  
17          filled with blood, and then he runs for his life. Gets out  
18          of there as fast as possible. Whatever Johnny and  
19          Anthony Hall did after he was gone, well, that's on them. I  
20          don't know whatever they did after I was gone, that's --  
21          that's their issue. Not mine.

22          Really? That's what -- that's the story you have  
23          to accept to find the defendant not guilty of murder. Let  
24          me say that again. That's the story you have to accept in  
25          order to find the defendant not guilty of murder.

1           Honestly, there is nothing funny about murder and  
2           for those of us who deal with this on a daily basis, it is  
3           never funny; but that story would get a belly laugh in other  
4           contacts if you were telling that story to someone else  
5           other than this courtroom, other than under such horrific  
6           circumstances.

7           It is not deserving of anymore credibility here as  
8           the defense has admirably conceded, so let's look at exactly  
9           what did happen. The defendant says he saw the money. Of  
10          course, there is a problem with that. She is wearing a high  
11          neck sweat shirt, thick heavy shirt, People's 46, and the  
12          money is in her bra.

13          You saw the Bobby pins -- safety pins; so there is  
14          no way he sees -- he does see the money. Absolutely true.  
15          Every now and then the truth leaks out. He does see the  
16          money. He sees it after they lift up her shirt and after he  
17          reaches in and grabbed her breast and takes the money,  
18          leaving his saliva and sweat and you know he sweats on her  
19          breast taking the money.

20          So he runs out; so we know that's not true. He  
21          runs out for his life. Okay, this man running out of the  
22          apartment for his life has the presence of mind to grab a  
23          plastic bag, a plastic bag that there is no evidence he ever  
24          had it before. There is no evidence he ever had it before;  
25          that there is no evidence he ever had before.

1           He comes in with a small paper bag. Leaves the  
2 next three times. Comes in empty handed. Leaves with a  
3 plastic bag. You need not speculate what was so important  
4 about the contents of the plastic bag. You may not  
5 speculate about what happened to the scissors. You need not  
6 speculate about what happened to the phone. You know he  
7 took the phone with him. That, you have that evidence.

8           You need not speculate about what else he was  
9 wearing in the apartment; but you know that whatever  
10 happened, he had the presence of mind to get a plastic bag,  
11 fill it up, and walk out the door. You need not speculate  
12 whether it was his idea to make sure to get the plastic bag  
13 and fill it with whatever he needed.

14           You need not speculate whether it was his idea or  
15 whether it was, in fact, any of these people's idea when he  
16 talks to Derek Richardson for five minutes and then again  
17 just before he leaves for five more minutes. You need not  
18 speculate about what -- what advice he may have gotten on  
19 the phone from those frantic phone calls he made after  
20 murdering Helen Abbott.

21           (Transcript continued on the next page.)  
22  
23  
24  
25



SUMMATION/PEOPLE

1 T-5 - Peo. V Mark Richardson, Ind.#3534/08

2 September 26, 2011:

3 MR. BOGDANOS: He made, after murdering Helen  
4 Abbott, you need not speculate what advise he may have gotten  
5 from any of the people he may have spoken to, except what you  
6 don't have to speculate about, is that he took a plastic bag  
7 out of there filled and the scissors and the phone are gone.

8 He also in his statement says that it happened in the  
9 kitchen. Of course you know it didn't happen in the kitchen.  
10 Why does he say it happened in the kitchen? Distancing himself  
11 as far as possible from the bedroom. As far as possible from  
12 the area where he left his palm print.

13 Remember, it's interesting, though, remember that the  
14 palm print, remember the comparison of the palm print,  
15 comparison of the palm print isn't until October. After the  
16 July 10th statement.

17 Doesn't know about the palm print. Doesn't know he  
18 left evidence in the back bedroom. So he couldn't fix, fashion  
19 his statement around the palm print in the bedroom.

20 And, finally, with regard to this particular  
21 statement, think about the biggest absurdity of all, he stood  
22 idly by while two people murdered Helen Abbott. That's his  
23 story. And they let him leave.

24 What? They let him leave? The people that did  
25 this -- you don't need to see the photos -- the people that did

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1 this are extraordinarily brutal and dangerous. We can all  
2 agree. There is no argument there. The people that did this  
3 are mind numbingly brutal and violent.

4 And they saw him, because he was there, they were  
5 talking to him, and they let him leave and the let him live?  
6 These people who did this, these other people, these  
7 unbelievably dangerous people, left a witness alive? Really.  
8 How absurd is that?

9 The only reason he's still alive, the only reason he  
10 got out of the apartment alive, is he's one of them, he's a  
11 participant not a witness. No witness was getting out of 12E  
12 alive. Period. End of story.

13 Because if your not a participant, your a witness,  
14 and if your a witness, your a threat. And you have already  
15 seen what these people will do.

16 And, so, as the defense stood before you earlier and  
17 made seeming concessions. Do not be misled by any concessions  
18 that the defense, or the defendant made in his statement, or by  
19 the seeming candor of the defense, the defendant's statement in  
20 this case and the defense, and I am not disparaging, the  
21 defense has done an honorable, fair, respectful job in this  
22 case, but the defense in this case is nothing more than  
23 admitting what you can't deny, denying what you can't admit.

24 Your DNA puts you on her body. You got to admit it.  
25 Can't come up with something. The fingerprint puts you in the

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1 back room. You got to admit it. Don't be misled by that  
2 admitting what you can't deny, can't deny the obvious, deny  
3 what you can't admit, don't admit the murder.

4 This really is simply just another way, we talked  
5 about this on jury selection, four people do a robbery, four  
6 people confess, all four people are the getaway driver. It's  
7 just the way it is. And that's what you have here in the  
8 defendant's statement.

9 So, now let's step back, let's step back and now  
10 let's look at the statement carefully and let's see what it  
11 actually shows us about what really did happen.

12 We know, uncontroverted, what happens when you owe  
13 the defendant money. Owing the defendant money is just, put it  
14 mildly, a scary proposition. He lent Anthony Hall \$28 because  
15 Desiree, his live in girlfriend said to. But the lending came  
16 with a warning. 19:45.

17 (Videotape of defendant's statement being played.)

18 MR. BOGDANOS: Stop. He just told the woman  
19 that east living with: He doesn't pay me my money I'm going to  
20 see you for my money. There's an insight into Mark  
21 Richardson. There's an insight.

22 You want motive? You may not accept it, it may not  
23 comport with any sense of human decency that you abide by, or  
24 that any of us abide by, but you want -- rewind -- you want a  
25 clearer indication --

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1 (Videotape being played.)

2 MR. BOGDANOS: Stop it. I am going to see you  
3 for my money. So now we know and we know what he did. We know  
4 he wanted his money on the night of the murder. We know that  
5 the reason that he went to Helen Abbott's apartment was to get  
6 his money. 18:21:25, please.

7 (Videotape being played.)

8 MR. BOGDANOS: Stop. Don't make him blow up.  
9 Don't get in his face. Well, we have seen his handy work so we  
10 know what happens when he blows up wanting his money. We know  
11 exactly what he means when he says: I didn't want to blowup in  
12 that apartment. And so to get the defendant his money Anthony  
13 Hall takes him upstairs to twelve. There is no way Anthony  
14 Hall wants to face the defendant without money.

15 18:23:25.

16 (Videotape being)

17 MR. BOGDANOS: Stop. That's why -- there.  
18 There. He jumps up: Look, my man, what's up with my money?  
19 That's the reason they're there. That's the reason Anthony  
20 Hall is beefing with Helen Abbott, to get Mark Richardson, the  
21 money you don't want mad at you, you do not want him coming  
22 after you for money, and Anthony hall did not want that.

23 Fear is a great motivator. And fear by Anthony Hall  
24 is exactly what you see. And so once he jumps up and says:  
25 What's up with my money? Anthony Hall redoubles his efforts.

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1 23:53, please.

2 (Videotape being played.)

3 MR. BOGDANOS: Stop.

4 Can't you just hear the fear in Anthony Hall's  
5 voice? Hold on. Hold on. Hold on. She's got your money.  
6 Hold on. Hold on, big man, she's got your money.

7 That's what's happening in that apartment.

8 But, you see, Helen Abbott doesn't scare so easy.  
9 Helen Abbott doesn't scare as easy as Anthony Hall. Helen  
10 Abbott, feisty, flawed, Helen Abbott, who's lived her life,  
11 doesn't scare.

12 Helen Abbott is about to make the greatest mistake of  
13 her life. Helen Abbott has made plenty of mistakes in her  
14 life, plenty of good things, but plenty of mistakes, but all  
15 the mistakes Cheryl Abbott told us about, crack pales in  
16 comparison, that Helen Abbott is about to make -- she's about  
17 to stand up to mark Richardson in the condition that he's in,  
18 you see him on the video coming in and out of the elevator, you  
19 see what it's like, she's about to stand up to him and now, you  
20 know, it's the last mistake she ever made.

21 Hit play.

22 (Videotape being played.)

23 MR. BOGDANOS: Stop.

24 Last mistake of her life. Telling Mark Richardson,  
25 in that condition, on that day, January 11th, that she was not

## SUMMATION/PEOPLE

1 giving him the money. The money that he wanted.

2 Now, in fairness to Helen Abbott, she didn't see him  
3 up and down the elevator like you have. She didn't see how  
4 jacked up he was. She didn't see how throughout the course of  
5 the day this was a barely controlled energy that you can just  
6 feel by looking on the video, that build as the day went on,  
7 but she was about to see the results.

8 And as the defendant told us, Johnny grabbed her  
9 around the neck. Ironically that part probably appears to be  
10 true. This is Male Donor C under her fingernails.  
11 Exactly -- someone who grabbed you around your neck exactly  
12 where your fingernails would go.

13 So, whoever this person is, that person appears to  
14 have been the one who choked her around the neck.

15 And when that choke took place, before the defendant  
16 used the broom, or after he used the broom, irrelevant.  
17 Doesn't matter.

18 Whether the defendant had already pulled her shirt  
19 and bra up looking for the money or did it while she was in a  
20 choke hold. Irrelevant.

21 Whether he had already struck her, the defendant,  
22 before or after, or after she was down. Irrelevant.

23 And you want to know how the defendant struck her?  
24 You want to now how 6 foot 7, 300 pounds, could generate such  
25 force to create a brain trauma? Play.

SUMMATION/PEOPLE

1 (Videotape being played.)

2 MR. BOGDANOS: Stop. That's it. That's Robbery  
3 in the Second Degree right there. Done. Over. Finished. I  
4 told you some things are just this straight forward. He  
5 grabbed the money, while he's still in possession of the money,  
6 what the law calls immediate flight therefrom, someone comes to  
7 his aid acting in concert, accessorial liability, you will hear  
8 all about it, Johnny grabs her around the neck to stop her from  
9 getting her money back.

10 I told you Helen Abbott is a feisty woman, it was a  
11 mistake, but give her credit, she went down fighting.

12 Play.

13 (Videotape being played.)

14 MR. BOGDANOS: Hold it. Right there. Back up.  
15 Rewind. If you can. Thank you. You want to now how you use  
16 that force? Hit play.

17 (Videotape being played.)

18 MR. BOGDANOS: There you go. Stop. Now look at  
19 the wound. Watch that. Watch it again and again and again and  
20 then read the autopsy and then look at all the wounds on her  
21 body and look how the wounds on the let side of her body is  
22 perfectly consistent with that motion that he just showed right  
23 there.

24 With the scissors that were used to cut the  
25 electrical cord, the electrical cord that was cut in the sofa

## SUMMATION/PEOPLE

1 in the living room, that Mark Richardson was alone in.

2 And, then as you know from the crime scene, she  
3 dropped where she lay. She wasn't moved. There was no smudge,  
4 no smudge marks, she dropped right where she lay in that floor  
5 in the bedroom.

6 Sure there are unanswered questions. Why was she  
7 struck again after she was already down? You know, the blood  
8 spatter indicates she was struck at least one more time on the  
9 left side of her head after she was down. Why? I can't answer  
10 that.

11 Why was she gyrated with the cord? Why? Can't  
12 answer that. Why were per her pants pulled down with that  
13 semen stain right next to her?

14 It's not just that some questions don't have  
15 answers. Sometimes it's better not even to consider the answer  
16 for questions such of these. And, fortunately, in this case,  
17 none of those questions need to be answered.

18 All that needs to be answered in this particular case  
19 is who, and of all the people in the universe, put everyone  
20 together, only one person is seen on the video who used her  
21 phone, who left his DNA, who left his palm print, and all of  
22 that fits perfectly, allies of evidence converged on a single  
23 person.

24 And whether he held the scissors or not, whether he  
25 had held the cord or not, whether he held the broom or not,



## SUMMATION/PEOPLE

1 whether he held her or not, whether he pulled up her clothing  
2 or not, or whether he just beat her face in for 30 dollars, 28  
3 dollars, they were all in it together and she died at their  
4 hand.

5 And the law has a word for that, it is called  
6 guilty. And, so, in a little while you will be asked to go in  
7 the back and render a verdict based solely on the evidence.

8 You need not step back or recoil from your sworn duty  
9 to follow the law. Your oaths and your conscience and the  
10 evidence will not lead you astray.

11 And, so, I leave you now and thank you for your  
12 service, but as I do, I want to leave you with the words my  
13 grand mother told me growing up. She said it in Greek. I will  
14 translate. Everybody wants to go to heaven but nobody wants to  
15 die.

16 And in our context, everybody wants justice done, by  
17 some other people, and some other place, at some other time.

18 It is my sworn duty to tell you that this is the  
19 time, here is the place, and you are the people that ensure  
20 justice is done.

21 And justice here speaks with a clear voice, justice  
22 here speaks, cuts through all the white noise, like a charring  
23 call, and justice in this case says Mark Richardson, for the  
24 murder of Helen Abbott, the sexual abuse of Helen Abbott, and  
25 for the robbery of Helen Abbott, you are guilty.

SUMMATION/PEOPLE

1                   And now I ask you to find him so. Because he is.

2   Thank you.

3                   THE COURT: And thank you Mr. Bogdanos.

4                   Ladies and gentlemen, your lunch has arrived and

5   we'll serve it to you in the jury room.

6                   We will pickup the trial at 2:45 and at that time I

7   will give you my final instructions. Please do not discuss

8   during this interval.

9                   Thank you very much. You may all step into the jury  
10   room.

11                  (The jury exits the courtroom and enters the jury  
12   room for their luncheon recess.)

13                  (The trial was adjourned for a luncheon recess.)

14                  (Continued on next page.)

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1 THE COURT CLERK: Case on trial continues. The  
2 parties are present. The defendant is present. Jury is not  
3 present.

4 THE COURT: Both sides ready?

5 MR. BOGDANOS: Yes.

6 MR. KLEIN: Yes.

7 THE COURT: May we have the jury, please.

8 THE COURT OFFICER: Jury entering.

9 (Jury entered the courtroom.)

10 THE COURT CLERK: Case on trial continues.  
11 Parties are present. The defendant is present. All jurors  
12 are present and properly seated.

13 THE COURT: Thank you, ladies and gentlemen, I  
14 will now give you my final instructions on the law  
15 pertaining to this case. When I am finished you will retire  
16 to deliberate. At the outset I thank all of you for your  
17 patience and attention throughout these proceedings. I also  
18 commend the attorneys, Mr. Bogdanos, Mr. Klein, and  
19 Ms. Legler for the very capable manner in which they have  
20 carried out their responsibilities.

21 Please keep in mind that you must accept the law  
22 as I give it to you whether or not you agree with it.

23 As in every case the charge will be divided into  
24 three distinct parts. First, I will go through a series of  
25 general instructions on specified topics, such as

1 credibility and reasonable doubt. Later on in part two, I  
2 will instruct you as to the elements of the specific crimes,  
3 which will be submitted for your consideration in this case;  
4 and then at the end in part three, I will provide some brief  
5 instructions on the deliberations themselves.

6 It's -- unfortunately, it's a bit longer than the  
7 typical charge largely because of the number of crimes  
8 involved, offenses. Usually the charge takes about 30 to 35  
9 minutes. My best guess is this one will take about 45  
10 minutes and, in fact, if I start to lose my voice and get  
11 tired, I may resort to sitting over here and turning on the  
12 microphone. I don't like to do it that way because it's --  
13 I can see the stuff better when I am standing up; and I  
14 probably will have to put on my reading glasses if I sit  
15 over there. If I do that, that's why. That's the only  
16 reason.

17 All right, the first topic, general topic, is  
18 called fundamental principles of law. During the jury  
19 selection process and again in my preliminary remarks to  
20 you, I made reference to certain fundamental principles of  
21 criminal law. Because of their obvious importance, I will  
22 now reemphasize some of them.

23 This document, ladies and gentlemen, is a copy of  
24 the indictment in the case. Once again, the indictment  
25 itself is not evidence of anything and it cannot be taken by

1 you to be evidence of anything. An indictment is merely the  
2 means by which a defendant is informed of the charges  
3 against him and brings him into court to face those charges.  
4 Likewise an arrest is not evidence that a crime was  
5 committed.

6 As the defendant Mr. Richardson sits there now and  
7 as he has throughout this trial, he carries with him the  
8 presumption of innocence. He will continue to have that  
9 presumption even when you enter the jury room to begin your  
10 deliberations. The presumption of innocence will leave the  
11 defendant only if during the course of your deliberations,  
12 you determine that the People have proved the defendant's  
13 guilt beyond a reasonable doubt.

14 It is the People's burden to prove beyond a  
15 reasonable doubt the defendant's guilt of each of the  
16 elements of the offenses submitted for your consideration.  
17 If the People have not met their burden as to a particular  
18 offense, then you must find the defendant not guilty of that  
19 offense; however, if you determine that the People have  
20 proved the defendant's guilt beyond a reasonable doubt as to  
21 an offense, then you must find the defendant guilty of that  
22 offense.

23 Keep in mind that it is the People's burden to  
24 prove the defendant's guilt. That burden never shifts from  
25 the People. There is no burden on the defendant to prove

1 anything or to do anything at any time during the course of  
2 a trial.

3 You, the jury, are the sole and exclusive judges  
4 of the facts. It is your job to examine the evidence in  
5 order to determine what the facts are. You will take the  
6 facts as you find them and then apply them to the law in  
7 order to reach your verdict.

8 Reasonable doubt, topic number two, as indicated  
9 the law requires that the People prove a defendant's guilt  
10 beyond a reasonable doubt; thus, the evidence must satisfy  
11 you beyond a reasonable doubt that the crimes charged were  
12 committed and that the defendant is, in fact, the person who  
13 committed the crimes.

14 The law does not require that the People prove the  
15 defendant's guilt beyond all possibility of a doubt or  
16 beyond a shadow of a doubt or to a mathematical certainty.  
17 Those standards are virtually impossible to attain.

18 On the other hand, it is not sufficient for the  
19 People to prove that the defendant is probably guilty.  
20 Rather you must be firmly convinced as to the defendant's  
21 guilt, and in legal terms that means proof beyond a  
22 reasonable doubt.

23 So the question arises how does one define the  
24 term beyond a reasonable doubt? Unfortunately, there is no  
25 precise definition of the term because it depends on the

1 evidence presented in a given case and how the jury assesses  
2 that evidence. As I have told you the evidence consists of  
3 the sworn testimony of the witnesses and the physical items  
4 that were received into Evidence and any stipulations that  
5 were agreed to by the parties.

6 In addition, the evidence also includes any  
7 reasonable inferences that can be drawn from the testimony,  
8 the exhibits, and the stipulations.

9 In order for a doubt to be reasonable, it must be  
10 based on the evidence or the lack of evidence in the case.  
11 A doubt is not reasonable if it is based upon anything else.  
12 For example, a doubt is not reasonable if it is based on  
13 whim or speculation. A doubt is not reasonable if it is  
14 based on emotion, bias, prejudice, or sympathy. A  
15 reasonable doubt is a doubt based upon reason. It is a  
16 doubt for which a juror can give a reason if called upon to  
17 do so in the jury room.

18 That does not mean, however, that a juror is  
19 required to articulate the reason. Once again, to be a  
20 reasonable doubt, the doubt must arise because of the nature  
21 and quality of the evidence in the case or from the lack or  
22 insufficiency of the evidence.

23 To be a reasonable doubt, it should be one which a  
24 reasonable person acting in a matter of this importance  
25 would be likely to entertain because of the evidence or the

1 lack of evidence in the case.

2 Credibility, next topic, as judges of the facts,  
3 ladies and gentlemen, you alone determine the truthfulness  
4 and accuracy of the testimony of each witness. You must  
5 decide whether a witness told the truth and was accurate or  
6 instead testified falsely or was mistaken. There is no  
7 particular formula for evaluating the truthfulness or  
8 accuracy of another person's statements or testimony.

9 You bring to this process all of your varied  
10 experiences. Some of the credibility factors that you may  
11 wish to consider are as follows: Did the witness have an  
12 opportunity to see or hear the events about which the  
13 witness testified? Did the witness have the ability to  
14 recall those events accurately? Was the testimony of the  
15 witness plausible and, therefore, likely to be true; or was  
16 it implausible and, therefore, not likely to be true?

17 Did the manner in which the witness testify  
18 reflect upon the truthfulness of the witness's testimony?  
19 To what extent, if any, did the witness's background,  
20 training, education, or experience affect the witness's  
21 believability; and, finally, did the witness have a bias,  
22 hostility, or some other attitude that affected the  
23 truthfulness of the witness's testimony?

24 In addition -- still on the topic, general topic  
25 of credibility -- you may consider whether a witness had an



1 interest in the outcome of this case or instead whether the  
2 witness had no such interest. You are not required to  
3 reject the testimony of an interested witness or to accept  
4 the testimony of a witness who has no interest in the  
5 outcome of the case.

6 You may, however, consider whether an interest in  
7 the outcome or the lack of such interest affected the  
8 truthfulness of the witness's testimony.

9 You may also consider whether a witness had or did  
10 not have a motive to lie. If a witness did have a motive to  
11 lie, you may consider whether and to what extent, if any,  
12 that motive affected the truthfulness of the witness's  
13 testimony; and if a witness did not have a motive to lie,  
14 you may consider that as well in evaluating the witness's  
15 truthfulness.

16 You may also consider whether a witness's  
17 testimony was consistent with the testimony of other  
18 witnesses or with other Evidence in the case. If there were  
19 inconsistencies by or among witnesses, you may consider  
20 whether they were significant inconsistencies related to  
21 important facts or instead were the kind of minor  
22 inconsistencies that one might expect with multiple  
23 witnesses to the same event.

24 And, finally, if you find that any witness has  
25 intentionally testified falsely as to any material fact, you

1 may then disregard that witness's testimony in its entirety.  
2 On the other hand, you may disregard so much of it as you  
3 find was untruthful and you may accept some much of it as  
4 you find had been given truthfully and accurately.

5 Next topic, inconsistent statements, you may  
6 consider whether a witness made statements at this trial  
7 which were inconsistent with each other. You may also  
8 consider whether a witness made a previous statement, which  
9 was inconsistent with the witness's testimony at trial. The  
10 contents of any prior, inconsistent statement are not proof  
11 of what happened. You may use evidence of a prior  
12 inconsistent statement only to evaluate the truthfulness or  
13 accuracy of the witness's testimony at trial.

14 Police testimony, you should use the same  
15 standards and tests in evaluating the testimony of a police  
16 officer as you would use in evaluating the testimony of any  
17 other witness. The fact that a person is a police officer,  
18 does not entitle that person to any greater credibility or  
19 lesser credibility than any other witness.

20 Expert witness, ladies and gentlemen, you will  
21 recall that a number of witnesses were qualified as experts  
22 in their respective fields in this case. Ordinarily a  
23 witness is limited to testifying about facts and is not  
24 permitted to give an opinion. Where, however, a scientific,  
25 medical, technical, or other specialized knowledge will help

1 the jury to understand the evidence or to determine a fact  
2 in issue, a witness with expertise in a specialized field  
3 may render an opinion about such matters.

4 You should evaluate the testimony of any such  
5 witness just as you would the testimony of any other  
6 witness. You may accept or reject such testimony in whole  
7 or in part just as you may with respect to the testimony of  
8 any other witness. In deciding whether or not to accept  
9 such testimony, you should consider the following: The  
10 qualifications and believability of the witness; the facts  
11 and other circumstances upon which the witness's opinion was  
12 based; the accuracy or inaccuracy of any assumed or  
13 hypothetical fact upon which the opinion was based; the  
14 reasons given for the witness's opinion and whether the  
15 witness's opinion is consistent or inconsistent with other  
16 evidence in the case.

17 Defendant not testifying, ladies and gentlemen,  
18 the fact that the defendant Mr. Richardson did not testify  
19 is not a factor from which any inference unfavorable to him  
20 may be drawn.

21 Inference versus speculation, as I said earlier  
22 you are not -- you are permitted to draw reasonable  
23 inferences from the evidence. You are not, however,  
24 permitted to speculate. An inference is a conclusion based  
25 on evidence which is derived at by application of reason or

1 logic to the evidence. A speculation on the other hand is a  
2 conclusion based on evidence, which is insufficient to  
3 warrant that conclusion. It is, in essence, a guess or  
4 conjecture.

5 Circumstantial evidence, in this case the People  
6 are relying in part on circumstantial evidence to prove the  
7 defendant's guilt. Let me now explain the difference  
8 between direct evidence and circumstantial evidence. Direct  
9 evidence is evidence which standing alone would be  
10 sufficient to establish a desired fact.

11 For example, the testimony of a witness who saw an  
12 entire crime as it happened would be direct evidence.  
13 Circumstantial evidence is also evidence of some fact or  
14 facts but circumstantial evidence does not directly  
15 establish the desired fact; rather, circumstantial evidence  
16 of some fact or facts is known as the circumstantial facts,  
17 which give rise to a reasonable inference of the desired  
18 fact.

19 The law draws no distinction between  
20 circumstantial evidence or direct evidence in terms of  
21 weight or importance. Either type of evidence may be enough  
22 to establish guilt beyond a reasonable doubt depending on  
23 the facts of the case as the jury finds them to be.

24 While the People may prove a desired fact through  
25 circumstantial evidence, their burden remains proof beyond a

1 reasonable doubt. This requires a two-step process. First  
2 the circumstantial facts must be proved beyond a reasonable  
3 doubt in the same manner as direct evidence.

4 Second, the jury must find that the existence of  
5 the desired fact is logically compelled beyond a reasonable  
6 doubt from the existence of the circumstantial facts; thus,  
7 to find a fact beyond a reasonable doubt through  
8 circumstantial evidence, the jury must find that the  
9 existence of the desired fact may be reasonably and  
10 naturally inferred from the circumstantial facts and that  
11 any alternative inference may be eliminated beyond a  
12 reasonable doubt.

13 Next topic, Anthony Hall, there has been testimony  
14 at this trial concerning Anthony Hall. You are not to  
15 speculate on the present status of Mr. Hall.

16 Consciousness of guilt, in this case the People  
17 contend that the defendant engaged in conduct that  
18 demonstrated a consciousness of guilt. In determining  
19 whether conduct constitutes a consciousness of guilt, you  
20 must consider whether the conduct has an innocent  
21 explanation.

22 Common experience teaches that even an innocent  
23 person who finds himself under suspicion may resort to  
24 conduct which gives the appearance of guilt. The weight and  
25 importance you give to evidence offered to show

1 consciousness of guilt depends on the facts of the case.

2 Punishment, let us now discuss something which is  
3 the concern of the Court rather than the jury; and I am  
4 referring, of course, to the question of what the punishment  
5 would be if your verdict in this case should be guilty.

6 Ladies and gentlemen, it is improper for you  
7 during your deliberations to speculate about or to consider  
8 in any way what the sentence or punishment in this case  
9 might be. Accordingly, you must not consider this issue in  
10 reaching your verdict.

11 Other matters not to be considered as evidence,  
12 next topic, as I said your verdict must be based solely on  
13 the evidence or the lack of evidence in the case. In this  
14 regard I remind you that the voir dire comments by the  
15 attorneys as well as their opening and closing arguments are  
16 not evidence. In particular, the summations were arguments  
17 by the attorneys that the evidence you have heard supports  
18 their respective positions.

19 While the arguments themselves are not evidence  
20 you may, of course, adopt the reasoning of any argument if  
21 you find that it is supported by the evidence. Also not  
22 evidence and, therefore, not to be considered by you are any  
23 discussions between the attorneys or among the attorneys and  
24 me; the objections made by the attorneys and my rulings on  
25 those objections.

1 I instruct you that any matters that were stricken  
2 from the record including testimony are not part of the  
3 evidence in the case. You must totally disregard any such  
4 matters and they must play no part whatsoever in your  
5 deliberations.

6 Part two, murder in the second degree. The first  
7 count of the indictment charges the crime of murder in the  
8 second degree. Under our law a person is guilty of murder  
9 in the second degree when in the course of and in  
10 furtherance of the commission or attempted commission of  
11 robbery, whether robbery in the first, second, or third  
12 degree or the immediate flight therefrom that person or  
13 another participant -- if there be any -- causes the death  
14 of a person other than one of the participants.

15 Under this law when in the course of and in  
16 furtherance of the commission of robbery or the immediate  
17 flight therefrom a participant in the commission of that  
18 felony causes the death of a nonparticipant. All of the  
19 participants, the one who caused the death as well as the  
20 other participants in the felony are guilty of murder in the  
21 first degree.

22 I will now give you the specific definitions of  
23 robbery in the first, second, and third degrees when I -- I  
24 am sorry -- I will give you the specific definitions of  
25 robbery in the first, second, and third degrees when I

1 instruct you on those crimes. There are specific counts.  
2 They are coming up.

3 In determining whether a person is in immediate  
4 flight therefrom, the commission or attempted commission of  
5 robbery, you may consider, one, the distance, if any,  
6 between the location of the robbery and the location where  
7 death was caused; two, the interval of time, if any, between  
8 the commission of the felony and the causing of the death;  
9 three, whether police, security personnel, or citizens were  
10 in close pursuit at the time the death was caused; four,  
11 whether such person possessed fruits of the crime at the  
12 time the death was caused; and, five, whether such person  
13 had reached a place of temporary safety before the death was  
14 caused.

15 In order for you to find the defendant  
16 Mr. Richardson guilty of this crime, the People are required  
17 to prove from all the evidence in the case beyond a  
18 reasonable doubt both of the following two elements: First,  
19 that January 11, 2009 (sic), in New York County the  
20 defendant Mark Richardson, committed robbery; and, second,  
21 that in the course of and in furtherance of the commission  
22 of such crime or the immediate flight therefrom, the  
23 defendant or another participant in the commission of that  
24 crime caused the death of Helen Abbott and that Helen Abbott  
25 was not a participant in that felony.



1           If you find that the People have not proven beyond  
2 a reasonable doubt either one or both of those elements, you  
3 must find the defendant not guilty of murder in the second  
4 degree as charged in the first count.

5           On the other hand, if you find that the People  
6 have proved beyond a reasonable doubt both of those  
7 elements, you must consider the affirmative defense the  
8 defendant has raised. Remember, if you have already found  
9 the defendant not guilty of murder in the second degree as  
10 charged in this count, you will not consider the affirmative  
11 defense.

12           Under our law it is an affirmative defense as  
13 murder in the second degree as charged in this count that,  
14 one, the defendant did not commit the homicidal act or in  
15 any way solicit, request, command, importune, cause or aid  
16 the commission thereafter; and two, the defendant was not  
17 armed with a deadly weapon or any instrument, article, or  
18 substance readily capable of causing death or serious  
19 physical injury and of a sort not ordinarily carried in  
20 public places by law abiding citizens; and, three, that the  
21 defendant had no reasonable ground to believe that any other  
22 participant was armed with such a weapon; instrument,  
23 article or substance; and, four, that the defendant had no  
24 reasonable ground to believe that any other participant  
25 intended to engage in conduct likely to result in death or

1 serious physical injury.

2 Under our law the defendant has the burden of  
3 proving an affirmative defense by a preponderance of the  
4 evidence. In determining whether the defendant has proven  
5 the affirmative defense by a preponderance of the evidence,  
6 you may consider evidence introduced both by the People or  
7 by the defendant.

8 A preponderance of the evidence means the greater  
9 part of the believable and reliable evidence; not in terms  
10 of the number of witnesses or the length of time taken to  
11 present the evidence; but in terms of its quality and the  
12 weight and convincing effect it has.

13 For the affirmative defense to be proved by a  
14 preponderance of the evidence, the evidence that supports  
15 the affirmative defense must be of such convincing quality  
16 as to outweigh any evidence to the contrary; therefore, if  
17 you find that the defendant has not proved the affirmative  
18 defense by a preponderance of the evidence, then based upon  
19 your initial determination that the People have proved  
20 beyond a reasonable doubt the elements of murder in the  
21 second degree, you must then find the defendant guilty of  
22 that crime as charged in the count.

23 On the other hand, if you find that the defendant  
24 has proved the affirmative defense by a preponderance of the  
25 evidence, then you must find the defendant not guilty of

1 murder in the second degree as charged in this count.

2 Second count, the second count also is for murder  
3 in the second degree; but the underlying felony specified is  
4 sexual abuse in the first degree rather than robbery.  
5 Again, I will give you the definition of sexual abuse in the  
6 first degree when I instruct you on that specific crime.

7 In order for you to find the defendant guilty of  
8 murder in the second degree on the second count, the People  
9 are required to prove from all of the evidence in the case  
10 beyond a reasonable doubt both of the following elements;  
11 first, that on that same day January 11, 2009, (sic) in New  
12 York County the defendant Mark Richardson committed sexual  
13 abuse in the first degree; and, second, that in the course  
14 of and in the furtherance of the commission of such crime or  
15 the immediate flight therefrom, the defendant or another  
16 participant in the commission of that crime caused the death  
17 of Helen Abbott and that Helen Abbott was not a participant  
18 in that felony.

19 If you find that the People have not proved beyond  
20 a reasonable doubt either one or both of the elements, then  
21 you must find the defendant not guilty of murder in the  
22 second degree as charged in the second count.

23 (Transcript continued on the next page.)  
24  
25

## JURY INSTRUCTIONS

1 T-7 - Peo. V Mark Richardson, Ind. 3534/08

2 September 26, 2011:

3 THE COURT: On the other hand, if you find that  
4 the People have proved, beyond a reasonable doubt, both of  
5 these elements, you must then consider the affirmative defense  
6 the defendant has raised as I instructed you on the first  
7 count.

8 If you then find that the defendant has not proved  
9 the affirmative defense by a preponderance of the evidence,  
10 then based upon your initial determination that the People had  
11 proved beyond a reasonable doubt the element of Murder in the  
12 Second Degree, you must find the defendant guilty of that crime  
13 as charged in the count.

14 On the other hand, if you find that the defendant has  
15 proved the affirmative defense by a preponderance of the  
16 evidence, then you must find the defendant not guilty of Murder  
17 in the Second Degree as charged in the second count.

18 Count 3, Robbery in the First Degree, under a serious  
19 physical injury theory. As noted, the third count charges  
20 Robbery in the First Degree.

21 The law, as applies to this count, defines robbery in  
22 the first degree as follows:

23 A person is guilty of robbery in the first degree  
24 when he forcibly steals property, and when, in the course of  
25 the commission of the crime, or the immediate flight therefrom,

JURY INSTRUCTIONS

1 he or another participant in the crime causes serious physical  
2 injury to any person who is not a participant in the crime.

3 The term stealing, which the law calls larceny, and  
4 the term forcible stealing, have their own special meaning in  
5 the law.

6 A person steals property and commits larceny when,  
7 with the intent to deprive another of property or to  
8 appropriate the property to himself or a third person, such  
9 person wrongfully takes, obtains, or withholds property from  
10 the owner.

11 A person forcibly steals property and commits  
12 robbery, when in the course of committing a larceny, he uses or  
13 threatens the immediate use of physical force upon another  
14 person for the purpose of compelling the owner of such property  
15 to deliver up the property, or for the purpose of preventing or  
16 overcoming resistance to the taking of the property, or for the  
17 purpose of preventing or overcoming resistance to the retention  
18 of the property immediately after the taking.

19 The term serious physical injury means:

20 Impairment of a person's physical condition which  
21 causes a substantial risk of death, or which causes death or  
22 serious and protracted disfigurement, or protracted impairment  
23 of health, or protracted loss or impairment of the function of  
24 any bodily organ.

25 For you to find the defendant guilty of Robbery in

JURY INSTRUCTIONS

1 the First Degree, on this count, the People must prove both of  
2 the following elements beyond a reasonable doubt:

3 First, that on or about January 11, 2009, in New York  
4 County, the defendant, Mark Richardson, personally or by acting  
5 in concert with another person, forcibly stole property.

6 Second, that in the course of the commission of the  
7 robbery or the immediate flight therefrom, the defendant, or  
8 another participant in the crime, caused serious physical  
9 injury to a person who is not a participant in the robbery,  
10 specifically, Helen Abbott.

11 If you find that the People have proved both of these  
12 elements beyond a reasonable doubt then you must find the  
13 defendant guilty of Robbery in the First Degree.

14 However, if you find that one or both of the elements  
15 has not been proved beyond a reasonable doubt then you must  
16 find the defendant not guilty of Robbery in the First Degree  
17 and you must then consider the lesser included offense of  
18 Robbery in the Third Degree, which we'll get to momentarily.

19 Fourth count. Robbery in the Second Degree. The  
20 fourth count charges the defendant with Robbery in the Second  
21 Degree. The law, as applies to this case, defines Robbery in  
22 the Second Degree as follows:

23 A person is guilty of Robbery in the Second Degree,  
24 when that person forcibly steals property and when that person  
25 is aided by another person who is actually present.

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1 In order for to you find the defendant guilty of this  
2 crime the People must prove beyond a reasonable doubt both of  
3 the following elements:

4 First, that on or about January 11, 2009, in New York  
5 County, the defendant, Mark Richardson, forcibly stole property  
6 from Helen Abbott.

7 Second, that the defendant was aided in doing so by  
8 another person who was actually present.

9 If you find that the People have proved both of these  
10 elements beyond a reasonable doubt then you must find the  
11 defendant guilty of Robbery in the Second Degree on this  
12 count.

13 However, if you find that either one or both of the  
14 elements has not been proved beyond a reasonable doubt, then  
15 you must find the defendant not guilty of Robbery in the Second  
16 Degree.

17 And, again, you must consider the lesser included  
18 offense of Robbery in the Third Degree.

19 Now, Robbery in the Third Degree, as stated, Robbery  
20 in the Third Degree is a lesser included offense on both the  
21 third and fourth counts. You should consider this lesser  
22 included offense on the third count if, and only if, you have  
23 found the defendant not guilty of Robbery in the First Degree.

24 Similarly, you should consider Robbery in the Third  
25 Degree on the fourth count if, and only if, you have found the

JURY INSTRUCTIONS

1 defendant not guilty of Robbery in the Second Degree.

2 Under the law, a person is guilty of Robbery in the  
3 Third Degree when he forcibly steals property.

4 For you to find the defendant guilty of Robbery in  
5 the Third Degree the People must prove the following elements  
6 beyond a reasonable doubt.

7 First -- the following element. Just one. That on  
8 January 11, 2009, in New York County, the defendant, Mark  
9 Richardson, forcibly stole property from Helen Abbott.

10 If you find that the People have proved this element  
11 beyond a reasonable doubt then you must find the defendant  
12 guilty of Robbery in the Third Degree.

13 However, if you find that the People have not proved  
14 this element beyond a reasonable doubt, then you must find the  
15 defendant not guilty.

16 Sexual Abuse in the First Degree, the fifth count,  
17 charges the defendant with Sexual Abuse in the First Degree.

18 Under our law, a person is guilty of Sexual Abuse in  
19 the First Degree, when he subjects another person to sexual  
20 contact by means of forcible compulsion.

21 The term sexual contact means any touching of the  
22 sexual or other intimate part of a person not married to the  
23 actor, for the purpose of gratifying sexual desire of either  
24 party. It includes the touching of the actor by the victim, as  
25 well as the touching of the victim by the actor, whether



JURY INSTRUCTIONS

1 directly or through clothing.

2           The term forcible compulsion means: To intentionally  
3 compel either by the use of physical force or by a threat which  
4 places the person in fear of immediate death or physical  
5 injury.

6           For to you find the defendant guilty of Sexual Abuse  
7 in the First Degree, the People must prove each of the  
8 following three elements beyond a reasonable doubt.

9           First, that on or about January 11, 2009, in New York  
10 County, the defendant, Mark Richardson, engaged in touching  
11 with Helen Abbott.

12           Specifically, that there was touching between his  
13 mouth and her breast.

14           Second, that the defendant did so without Helen  
15 Abbott's consent by the use of forcible compulsion.

16           Third, that such touching constituted sexual  
17 contact.

18           If you find that the People have proven each of these  
19 three elements beyond a reasonable doubt then you must find the  
20 defendant guilty of Sexual Abuse in the First Degree.

21           However, if you determine that any one or more of the  
22 elements has not been proved beyond a reasonable doubt then you  
23 must find the defendant not guilty.

24           Accessory liability slash acting in concert. Our  
25 law recognizes that two or more individuals can act jointly to

JURY INSTRUCTIONS

1 commit a crime and that in certain circumstances each can be  
2 held criminally liable for the acts of the other.

3 In that situation those persons can be said to be  
4 acting in concert with each other.

5 Our law defines the circumstances under which one  
6 person may be criminally liable for the conduct of another  
7 person and that definition is as follows:

8 Quote: "When one person engages in conduct which  
9 constitutes an offense, another is criminally liable for such  
10 conduct, when acting with the state of mind required for the  
11 commission of that offense, he solicits, requests, commands,  
12 importunes, or intentionally aids such person to engage in such  
13 conduct.

14 Under that definition, mere presence at the scene of  
15 a crime, even with knowledge that the crime is taking place, or  
16 mere association with the perpetrator of a crime, does not by  
17 itself make a defendant criminally liable for that crime.

18 In order for the defendant to be held criminally  
19 liable for the conduct of another person, or persons, which  
20 constitutes an offense, you must find beyond a reasonable doubt  
21 as follows:

22 Number one, that the defendant solicited, requested,  
23 commanded, importuned, or intentionally aided that person, or  
24 persons, to engage in that conduct.

25 And, two, that the defendant did so with the state of

JURY INSTRUCTIONS

1 mind required for the commission of the offense.

2 If it is proven beyond a reasonable doubt that the  
3 defendant is criminally liable for the conduct of another  
4 person, or persons, the extent or degree of the defendants  
5 participation in the crime does not matter.

6 A defendant proven beyond a reasonable doubt to be  
7 criminally liable for the conduct of another in the commission  
8 of a crime is as guilty the of the crime as if the defendant  
9 personally had committed every act constituting the crime.

10 The People have the burden again of proving beyond a  
11 reasonable doubt that the defendant acted with the state of  
12 mind required for the commission of the crime and either  
13 personally or by acting in concert with another person, or  
14 persons, committed each of the remaining elements of the  
15 crime.

16 I am now going to give you an expanded charge on  
17 intent. Intent does not require premeditation. In other  
18 words, intent does not require advanced planning. Nor is it  
19 necessary that the intent be in a persons mind for any  
20 particular period of time.

21 The intent can be formed and need only exist at the  
22 very moment the person engages in prohibited conduct or acts to  
23 cause the prohibitive result and not at any earlier time.

24 The question naturally arises as to how to determine  
25 whether or not a defendant had the intent required for the

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1 commission of a crime.

2 To make that determination in this case you must  
3 decide if the required intent can be inferred beyond a  
4 reasonable doubt from the proven facts.

5 In doing so you may consider the defendant's conduct,  
6 if any, and all of the circumstances surrounding that conduct,  
7 including but not limited to the following:

8 What, if anything, did the defendant do or say. What  
9 result, if any, followed the defendant's conduct. And was that  
10 result the natural necessary and possible consequence of this  
11 conduct.

12 Therefore, in this case, from the facts you find to  
13 have been proven, decide whether or not you can infer beyond a  
14 reasonable doubt that the defendant had the intent required for  
15 the commission of these crimes.

16 We are almost there. Part 3.

17 Ladies and gentlemen, we have now reached the most  
18 critical stage of this trial. And I am referring, of course,  
19 to your deliberations. During this time you will discuss the  
20 evidence among yourselves in order to reach your verdict.

21 As I have stated, you should all enter the jury room  
22 with open minds and as you deliberate you must also be willing  
23 to listen to the arguments of your fellow jurors and to express  
24 your views to them.

25 If during your deliberations you should feel free to

JURY INSTRUCTIONS

1 change your mind if you find a different view point from your  
2 own to be persuasive.

3 On the other hand, you should hold to your own  
4 position if after due deliberations and discussion, you  
5 conscientiously believe it to be the correct one.

6 The deliberations are to take place only when all 12  
7 deliberating jurors and no one else are present inside the jury  
8 room. Your deliberations must cease if anyone else, such as a  
9 Court Officer should enter a jury room for any reason.

10 Your deliberations must also cease whenever the full  
11 jury is not present. You are entitled to see any physical  
12 exhibit that was received into evidence. Merely write out a  
13 request, signed by your foreperson, requesting the particular  
14 exhibit you wish to see and it will then be made available to  
15 you.

16 Now, it may be that you will have difficulty  
17 recalling certain portions of the charge -- I'm sorry -- of the  
18 testimony or the charge, or if you find part of the charges  
19 were unclear to you, if you wish to have any portion of the  
20 testimony or the charge reread to you, or if you wish to have  
21 some part of the charge explained further, again, just write  
22 out your request and have it signed by your foreperson.

23 Please make any such request as specific as  
24 possible. For example, you may limit a request for testimony  
25 by indicating the particular subject matter of the witness or

## JURY INSTRUCTIONS

1 witnesses involved. As soon as we have located the relevant  
2 part of the record we will call you out and answer your  
3 request.

4           You will take into the jury room with you a verdict  
5 sheet, it sets out the charges which are being submitted, all  
6 of the charges which are being submitted for your consideration  
7 and columns marked guilty or not guilty. You have to make a  
8 separate determination with respect to each charge. And when  
9 you have reached a verdict on a particular charge you will then  
10 mark the appropriate column.

11           Remember, your verdict as to each and every charge,  
12 whether it is guilty or not guilty, must be unanimous.

13           Now, very quickly on note taking. I just remind  
14 those who have been taking notes, that the notes are not a  
15 substitute for the official record, or for your own independent  
16 recollection, and that while you may take the notes into the  
17 jury room they should be -- they are for your use only and not  
18 for the use of anyone else.

19           So, ladies and gentlemen, that does it. Those are my  
20 instructions on this case. I now, under the law, I must confer  
21 with counsel. It maybe, for example, that I just said to you  
22 needs to be amended or clarified in some fashion.

23           Typically, however, these conferences do take place  
24 in a matter of minutes and word will be brought into you very  
25 shortly. So I am going to ask everyone, that is all 14 of you,

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1 to gather your things, if you will, and to go on into the jury  
2 room but to await further word from us. Do not yet begin any  
3 deliberations.

4 All right. Thank you very much.

5 (The jury was excused, exits the courtroom and enters  
6 the jury room.)

7 THE COURT: Okay. The coast is clear. With  
8 respect to the charge, any objection to the charge as given?

9 MR. BOGDANOS: Yes, Your Honor. Two. And I  
10 suspect both were just probably word processor errors.

11 On Sexual Abuse in the First Degree, when listing the  
12 elements, Your Honor said that the first element was that the,  
13 that specifically there was touching between mouth and her  
14 breast.

15 I never elicited that and there is no evidence of  
16 that. That's not the People's position. It's any touching  
17 under 130.00, subsection 3, sexual contact means any touching.  
18 We don't know if it's saliva or sweat. So that I actually  
19 would ask be corrected.

20 It's the first count, should be, whether there is any  
21 touching between the defendant and the victim's breast. So  
22 that's the part I think may have come from your last case or  
23 something but I never said that.

24 THE COURT: And what's your other?

25 MR. BOGDANOS: The other one, I don't need it

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1 corrected now, but if they were to ever ask for expanded  
2 intent, again, Your Honor in the expanded intent charge said  
3 that -- you know I should have it in front of me -- that it has  
4 to be the natural, the necessary and probable cause. The  
5 effect has to be the necessary effect.

6 That's not the law. It's natural and probable.  
7 There is no requirement under the law that the effect be the  
8 necessary effect. That's not a standard in the law.

9 So I don't know how that got -- I believe that was a  
10 typo.

11 MR. BOGDANOS: And that's what I thought, Judge.

12 MR. BOGDANOS: I don't need that corrected just  
13 if they ever ask for it again that word necessary needs to come  
14 out other than that it's fine.

15 THE COURT: All right. Mr. Klein, do you agree  
16 with Mr. Bogdanos as to the first one?

17 MR. KLEIN: As to, umm, sorry?

18 THE COURT: Sexual Abuse point.

19 MR. KLEIN: You have the indictment in front of  
20 you it's not in there. It's not in the indictment.

21 MR. BOGDANOS: Correct, it's sexual contact.

22 MR. BOGDANOS: No, I believe it. And I think  
23 it's just a typo.

24 THE COURT: I will just change it to the  
25 defendant engaged in touching with Ms. Abbott, specifically,



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1 that there was touching between defendant, any touching between  
2 the defendant --

3 MR. BOGDANOS: No, I take it back. It's in the  
4 indictment. No. No. I withdraw my objection. I will leave  
5 it. I'm sorry.

6 MR. KLEIN: That's all right.

7 MR. BOGDANOS: My fault.

8 THE COURT: All right. Square one for John  
9 Paul. Put that in the record please. I did not have the  
10 indictment in front of me.

11 MR. BOGDANOS: Nor I. And I didn't do the  
12 indictment it wouldn't have been in the indictment if I had  
13 done the indictment.

14 MR. KLEIN: Judge, I have a request. Are you  
15 done?

16 MR. BOGDANOS: Yes. The second point --

17 THE COURT: I take it you are fine to leave the  
18 spin on intent until they ask for it?

19 MR. KLEIN: Yes.

20 THE COURT: And now your point, Mr. Klein.

21 MR. KLEIN: I think I neglected to ask for a  
22 lesser included charge. Were there a conviction in this case I  
23 think my client could probably bring a 440 based on ineffective  
24 assistance of counsel, based on a reasonable view of the  
25 evidence in this case.

## JURY INSTRUCTIONS

1           Being that the defendant, what he did was, he stole  
2   the property, he stole not so much the money but that he stole  
3   the phone, and if he stole the phone and there's no basis  
4   really to understand how he stole the phone, then the defendant  
5   could be guilty of petit larceny and not guilty of any kind of  
6   robbery.

7           Because there is evidence in the case and, you know,  
8   it is a confusing issue, I am not trying to excuse myself,  
9   maybe this is why I missed it, because it's not clear what the  
10   actual property is that the People have to prove that the  
11   defendant took, and I am not saying that, therefore, they are  
12   going to come in with a duplicitous verdict, but it is  
13   certainly plausible that this jury will find that what the  
14   defendant did and that they'll disregard his statement and say,  
15   we don't believe anything the defendant says, we believe he  
16   stole in some fashion Helen Abbott's phone and if he does that  
17   that's petit larceny.

18           And I don't think anyone is prejudiced by the jury  
19   being instructed on that as a lesser included and that's my  
20   request.

21           MR. BOGDANOS: Well, as a procedural matter, we  
22   have already summed up so it's too late for that.

23           But, even putting that -- it's too late for that  
24   request, it's untimely -- even putting that aside, there is no  
25   reasonable view of the evidence that supports a petit larceny

JURY INSTRUCTIONS

1 in this case under any circumstances. All there is is a  
2 forcible taking.

3 Helen Abbott is dead. So, clearly force was used.  
4 So, the People -- first, we oppose it as untimely.

5 So that Mr. Klein doesn't beat himself up this  
6 would -- I would have opposed this had he requested it prior  
7 during the charging conference prior to sum and charge, there  
8 is no evidence in the record whatsoever and so the People  
9 oppose.

10 THE COURT: That application is denied.  
11 Anything else on the charge?

12 MR. KLEIN: That's it. Thank you.

13 THE COURT: All right.

14 Mr. Klein, on the two alternates jurors, what is your  
15 position?

16 MR. KLEIN: Let's keep them for now.

17 THE COURT: Thank you. And the verdict sheet.  
18 Please just say whether you agree with it.

19 MR. BOGDANOS: You don't want us to sign it?

20 THE COURT: I don't want you to sign.

21 MR. BOGDANOS: That's fine, Judge.

22 MR. KLEIN: Fine.

23 THE COURT: May the Sergeant enter the jury room,  
24 advise the 12 to begin and put the two alternates in a separate  
25 room?

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1 MR. KLEIN: Yes.

2 MR. BOGDANOS: Yes.

3 THE COURT: Tel them they may start.

4 (Whereupon, the jury begins their deliberations.

5 Time noted is 4:05 p.m.)

6 THE COURT: All right, back on the record.

7 THE COURT CLERK: Case on trial continues. All  
8 parties are present. The defendant is present. The jury is  
9 not present.

10 MR. KLEIN: Yes, I think we agreed on the  
11 witness list that can go in and I have no objection that it  
12 also has the names of the witnesses. That's fine.

13 MR. BOGDANOS: That's fine.

14 THE COURT: Just so the record is clear, we did  
15 receive a note from the jury, they asked for a list of numbered  
16 exhibits. We have now put together such a list and both sides  
17 have agreed to it and that it will go into the jury room in  
18 it's present form, correct?

19 MR. BOGDANOS: Yes.

20 MR. KLEIN: Yes, Judge.

21 THE COURT: All right. Exhibit list has gone  
22 into the jury room as Court Exhibit Number 5.

23 (Pause in the proceedings while the jury continues to  
24 deliberate.)

25 THE COURT CLERK: Case on trial continues. The

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1 parties are present. The defendant is present. The jury is  
2 not present.

3 THE COURT: Thank you. We have received our  
4 first note from the jury. Both sides have read it. We  
5 discussed it informally.

6 The note reads as follows: We, the jury, request,  
7 quote, "we need all of the charges in writing." End quote.

8 I believe both sides are in agreement that in  
9 response to the note I will simply advise them that they we do  
10 not provide written copies of the charges for the jury but,  
11 rather, I must reread those charges for them if they so  
12 desire.

13 MR. BOGDANOS: The only thing I would ask, in  
14 addition, if we could ask, I know you said already to be as  
15 specific as possible, and I would just ask if we could ask do  
16 they need the elements of the crimes or the entire charge. It  
17 might save Your Honor some voice.

18 THE COURT: It's true. They say charges but I  
19 took it to mean various crimes but it could be more than that.

20 MR. BOGDANOS: I do too. I took it to mean  
21 elements. If Mr. Klein consents we can just ask them.

22 MR. KLEIN: We can ask them but they can't answer  
23 now.

24 THE COURT: I will ask them to be more specific  
25 in a follow-up note. And I am also going to advise them to

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1    cease their deliberations given the hour and remind them that  
2    when I said 2009 in referring to any of the elements I meant  
3    2008 and they knew that.

4                   Are both sides ready?

5                   MR. KLEIN:   Yes.

6                   MR. BOGDANOS:  And impress timeliness for  
7    tomorrow morning.

8                   THE COURT:  I will.  May we have the jury,  
9    please.  And the alternates.

10                  THE SERGEANT:  Twelve deliberating jurors  
11    entering.

12                  (The 12 sworn jurors enter the courtroom.)

13                  THE SERGEANT:  Your Honor, the full jury is now  
14    entering.

15                  (The two alternates jurors enter the courtroom.)

16                  THE COURT CLERK:  Case on trial continues.  All  
17    parties are present.  The defendant is present.  All jurors are  
18    present and properly seated.

19                  THE COURT:  Thank you.  And, ladies and  
20    gentlemen, in this, your latest note, you quite understandably  
21    asked for the charges in writing.

22                  Unfortunately, New York is one of those few remaining  
23    states that does not allow a deliberating jury to have the  
24    charges in writing in the jury room and that means that we have  
25    to -- I have to reread the charges to you in the courtroom.

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1           So, that's the first problem with this note. The  
2 second problem is, when you say charges, we're not exactly sure  
3 what you are referring to, it could be the whole charge or  
4 could be the elements of the various offenses that you are  
5 interested in.

6           So we're going to ask you, first thing tomorrow  
7 morning, to give us a follow-up note on this note and thin I  
8 will read to you whatever it is that you want reread.

9           And, believe it or not, I am willing to do it as many  
10 times as you need to hear it, but that's the way we have to  
11 proceed.

12           In addition, when I read the charge to you and I was  
13 going through the various elements it has come to my attention  
14 that on a few occasions I misspoke and I gave you the wrong  
15 date. You probably picked that up. It's 2008 not 2009. I  
16 apologize for any confusion on that.

17           After conferring with counsel, I have decided, ladies  
18 and gentlemen, that we're going to call it a day at this  
19 point. You need a response to this note or it's follow-up  
20 equivalent in the morning as we're now passed the 4:30 hour.

21           So, to give you the charge, let's say you wanted the  
22 elements, to do that now, we could do it, but then there would  
23 be very little time for you to deliberate afterward, so it  
24 makes sense to call it a day and bring you in first thing  
25 tomorrow morning and get a response to this note. Give you a

PROCEEDINGS/DELIBERATIONS

1 response to the note.

2           So, let me remind everyone, all 14 of you, that we  
3 need you to be here promptly tomorrow morning, it's going to be  
4 a very, very busy day, so if you are running late, of course,  
5 give us a call, but please make every effort to be here by  
6 9:45. We cannot start until everyone is here.

7           And, also, since the case is at it's most critical  
8 stage, I am obliged to remind you that under no circumstances  
9 are you permitted to discuss this case with anyone between now  
10 and tomorrow morning.

11           So, that's it, you're good to go now and see you  
12 tomorrow morning. Thank you very much.

13           (Whereupon, the jury was excused and exits the  
14 courtroom.)

15           (The trial was adjourn to September 27, 2011.)

16           (Continued on next page.)

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1 SUPREME COURT  
2 TRIAL TERM

NEW YORK COUNTY  
PART 45

3 THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT #  
4 : 3534/08

5 AGAINST : CHARGE  
6 MARK RICHARDSON : MURD 2  
7 Defendant.

8 TRIAL - VERDICT

9 111 Centre Street  
10 New York, New York 10013  
11 September 27, 2011

12 B E F O R E:

13 HONORABLE BRUCE ALLEN  
14 JUSTICE OF THE SUPREME COURT

15 APPEARANCES: (Same as previously noted)

16 -----  
17 (Jury deliberating.)

18 THE COURT CLERK: Case on trial continues. All  
19 parties are present. The defendant is present. The jury is  
20 not present.

21 THE COURT: Thank you. We have a note this  
22 morning which reads as follows: "We, the jury, request  
23 please repeat counts three and four and five," and that  
24 would be a rereading of robbery in the first degree, robbery  
25 in the second degree and, of course, the lesser included

1 offense of robbery in the third degree; and then count five  
2 sexual abuse in the first degree.

3 I will use the same language that I used the first  
4 time around and I take it both sides are in agreement?

5 MR. KLEIN: Yes.

6 MR. BOGDANOS: Yes.

7 THE COURT: Are both sides ready for the jury?

8 MR. KLEIN: Yes.

9 MR. BOGDANOS: Yes, your Honor.

10 THE COURT: Thank you. May we have the jury,  
11 please.

12 Mr. Klein -- this is off the record.

13 (Off-the-record discussion.)

14 THE COURT OFFICER: Jury entering.

15 (Jury entered the courtroom.)

16 THE COURT CLERK: Case on trial continues. All  
17 parties are present. The defendant is present. All jurors  
18 are present.

19 THE COURT: Thank you, good morning, ladies and  
20 gentlemen. We have received your note. It is very  
21 straightforward. You asked for a rereading of counts three,  
22 four and five. I will now go through it again using  
23 essentially the same language. I will try to read it a  
24 little more slowly this time. If you want something  
25 repeated or you want me to back up, then say, read it again.

1 Just signify with a hand and I will be happy to do that.

2 Robbery in the first degree, the third count of  
3 the indictment charges robbery in the first degree. The law  
4 as it applies to this count defines robbery in the first  
5 degree as follows: A person is guilty of robbery in the  
6 first degree when he forcibly steals property and when in  
7 the course of the commission of a crime or the immediate  
8 flight therefrom he or another participant in the crime  
9 causes serious physical injury to any person who is not a  
10 participant in the crime.

11 The term stealing, which the law calls larceny,  
12 and the term forcible stealing have their own special  
13 meaning in the law. A person steals property and commits  
14 larceny when with the intent to deprive another of property  
15 or to appropriate the property to himself or to a third  
16 person, such person wrongfully takes, obtains, or withholds  
17 the property from the owner.

18 A person forcibly steals property and commits  
19 robbery when in the course of committing a larceny, he uses  
20 or threatens the immediate use of physical force upon  
21 another person for the purpose of compelling the owner of  
22 such property to deliver up the property or for the purpose  
23 of preventing or overcoming resistance to the taking of the  
24 property or for the purpose of preventing or overcoming  
25 resistance to the retention of the property immediately

1 after the taking.

2 The term serious physical injury means impairment  
3 of a person's physical condition which creates a substantial  
4 risk of death or which causes death or serious and  
5 protracted disfigurement or protracted impairment of health  
6 or protracted loss or impairment of the function of any  
7 bodily organ.

8 For you to find the defendant guilty of robbery in  
9 the first degree on this count, the People must prove both  
10 of the following elements beyond a reasonable doubt: First,  
11 that on or about January 11, 2008, in New York County the  
12 defendant Mark Richardson personally or by acting in concert  
13 with another person forcibly stole property.

14 Second, that in the course of the commission of  
15 the robbery or the immediate flight therefrom the defendant  
16 or another participant in the crime caused serious physical  
17 injury to a person who was not a participant in the crime  
18 specifically, Helen Abbott.

19 If you find that the People have proved both of  
20 these two elements beyond a reasonable doubt, then you must  
21 find the defendant guilty of robbery in the first degree;  
22 however, if you find that one or both of the elements has  
23 not been proved beyond a reasonable doubt, then you must  
24 find the defendant not guilty of robbery in the first  
25 degree; and you must then consider the lesser included

1 offense of robbery in the third degree.

2 Count four, robbery in the second degree the  
3 fourth count of the indictment charges the defendant with  
4 robbery in the second degree. The law as it applies to this  
5 case defines robbery in the second degree as follows: A  
6 person is guilty of robbery in the second degree when that  
7 person forcibly steals property and when that person is  
8 aided by another person who is actually present.

9 In order for you to find the defendant guilty of  
10 this crime, the People must prove beyond a reasonable doubt  
11 both of the following elements: First, that on  
12 January 11, 2008, in New York County the defendant  
13 Mark Richardson forcibly stole property from Helen Abbott.

14 Second, that the defendant was aided in doing so  
15 by another person who was actually present. If you find  
16 that the People have proved both of these two elements  
17 beyond a reasonable doubt, then you must find the defendant  
18 guilty of robbery in the second degree on this count;  
19 however, if you find that either one or both of the elements  
20 has not been proved beyond a reasonable doubt, then you must  
21 find the defendant not guilty of robbery in the second  
22 degree; and you must then consider the lesser included  
23 offense of robbery in the third degree.

24 Robbery in the third degree as stated, robbery in  
25 the third degree is a lesser included offense on both the

1 third and fourth counts. You should consider the lesser  
2 included offense of robbery in the third degree on the third  
3 count if and only if you have found the defendant not guilty  
4 of robbery in the first degree.

5 Similarly, you should consider robbery in the  
6 third degree on the fourth count if and only if you have  
7 found the defendant not guilty of robbery in the second  
8 degree.

9 Under the law a person is guilty of robbery in the  
10 third degree when he forcibly steals property. For you to  
11 find the defendant guilty of robbery in the third degree,  
12 the People must prove the following element beyond a  
13 reasonable doubt; that on January 11, 2008, in New York  
14 County the defendant Mark Richardson, forcibly stole  
15 property from Helen Abbott. If you find that the People  
16 have proved this element beyond a reasonable doubt, then you  
17 must find the defendant guilty of robbery in the third  
18 degree; however, if you find that the People have not proved  
19 the element beyond a reasonable doubt, then you must find  
20 the defendant not guilty.

21 Finally, the fifth count sexual abuse in the first  
22 degree, under our law a person is guilty of sexual abuse in  
23 the first degree when he subjects another person to sexual  
24 contact by means of forcible compulsion. The term "sexual  
25 contact" means any touching of the sexual or other intimate

1 parts of a person not married to the actor for the purpose  
2 of gratifying the sexual desire of either party.

3 It includes the touching of the actor by the  
4 victim as well as the touching of the victim by the actor  
5 whether directly or through clothing.

6 The term "forcible compulsion" means to  
7 intentionally compel either by the use of physical force or  
8 by a threat, which places the person in fear of immediate  
9 death or physical injury.

10 For you to find the defendant guilty of sexual  
11 abuse in the first degree, the People must prove each of the  
12 following three elements beyond a reasonable doubt, first,  
13 that on January 11, 2008, in New York County the defendant  
14 Mark Richardson engaged in touching with Helen Abbott;  
15 specifically, that there was touching between his mouth and  
16 her breast.

17 Second, that the defendant did so without  
18 Ms. Abbott's consent by the use of forcible compulsion; and  
19 third, that such touching constituted sexual contact. If  
20 you find that the People have proved each of these three  
21 elements beyond a reasonable doubt, then you must find the  
22 defendant guilty of sexual abuse in the first degree;  
23 however, if you determine that any one or more of the  
24 elements has not been proved beyond a reasonable doubt, then  
25 you must find the defendant not guilty.

1 Ladies and gentlemen, that completes the reading  
2 of those three counts. I am, therefore, going to ask all of  
3 you to return to the jury room. Thank you very much.

4 (Jury exited the courtroom.)

5 (Jury deliberating.)

6 MR. BOGDANOS: Your Honor, we have one matter to  
7 put on the record.

8 THE COURT: I am sorry. Mr. Bogdanos.

9 MR. BOGDANOS: Yes, Judge, the D.D.5's that I had  
10 requested be made as a court exhibit during our earlier  
11 argument on the defendant's third party exculpatory evidence  
12 motion, I have them now. I have shown it to Mr. Klein.  
13 There is fifteen altogether, and I think they are  
14 acceptable.

15 MR. KLEIN: It is fine if they become part of the  
16 court exhibit.

17 (Hanging.)

18 THE COURT: Mark them as court exhibits as well.

19 THE COURT CLERK: Yes.

20 MR. BOGDANOS: The only other thing, your Honor, I  
21 know this is completely unorthodox but I would kick myself  
22 if I can't say this long before the verdict, I would like to  
23 thank your honor for an extraordinarily fair trial and the  
24 way you treated the attorneys on both sides with respect and  
25 you let us try our cases; so I want to thank the Court for



1 that consideration throughout the course of the trial.

2 I also want to thank Mr. Klein. There is a reason  
3 he has a reputation of being one of the best attorneys in  
4 the business; and he has certainly proven it on this case.

5 THE COURT: Thank you. All right, you could bring  
6 Mr. Richardson down.

7 (Jury deliberating.)

8 THE COURT: You could show him the note.

9 (Hanging.)

10 (Defense Attorney Klein conferred with defendant.)

11 MR. KLEIN: Thank you, Judge.

12 THE COURT: You are welcome.

13 THE COURT CLERK: Case on trial continues.

14 Parties are present. The defendant is present. The jury is  
15 not present.

16 THE COURT: We have a new note from the jury.  
17 This one reads as follows: "We would like to hear count  
18 number one again," and as before I would simply reread the  
19 language given the first time around if that's acceptable to  
20 both sides.

21 MR. BOGDANOS: Yes, your Honor.

22 MR. KLEIN: Yes.

23 MR. BOGDANOS: Judge, you caught the '09?

24 THE COURT: I did. Both sides ready for the jury?

25 MR. BOGDANOS: Yes.

1 MR. KLEIN: Yes.

2 THE COURT: Thank you. May we have the jury,  
3 please.

4 THE COURT OFFICER: Jury entering.  
5 (Jury entered the courtroom.)

6 THE COURT CLERK: Case on trial continues. The  
7 parties are present. The defendant is present. All jurors  
8 are present and properly seated.

9 THE COURT: Thank you. Ladies and gentlemen, we  
10 are now ready to respond to your latest note. In this one  
11 you have asked for a rereading of count number one.

12 Murder in the second degree under count one, under  
13 our law a person is guilty of murder in the second degree  
14 when in the course of and in furtherance of the commission  
15 or attempted commission of a felony -- of a robbery whether  
16 robbery in the first, second or third degree or in the  
17 immediate flight therefrom that person or another  
18 participant, if there be any, causes the death of a person  
19 other than one of the participants.

20 Under that law when in the course of and in the  
21 furtherance of or commission of robbery or in the immediate  
22 flight therefrom a participant in the commission of that  
23 felony causes the death of a nonparticipant, then all of the  
24 participants, the one who caused the death as well as the  
25 other participants in the felony are guilty of murder in the

1 second degree.

2 In determining whether a person was in the  
3 immediate flight from the commission or attempted commission  
4 of robbery, you may consider number one, the distance, if  
5 any, between the location of the robbery and the location  
6 where death was caused; two, the interval of time, if any,  
7 between the commission of the felony and the causing of the  
8 death; three, whether any police, security personnel, or  
9 citizens were in close pursuit at the time the death was  
10 caused; four, whether such person possessed fruits of the  
11 crime at the time the death was caused; and, five, whether  
12 such person had reached a place of temporary safety before  
13 death was caused.

14 In order for you to find the defendant guilty of  
15 this crime, the People are required to prove beyond a  
16 reasonable doubt both of the following two elements: First,  
17 that on January 11, 2008, in New York County the defendant  
18 Mark Richardson committed robbery; and, second, that in the  
19 course of and in furtherance of the commission of such crime  
20 or in the immediate flight therefrom, the defendant or  
21 another participant in the commission of that crime caused  
22 the death of Helen Abbott and that Helen Abbott was not a  
23 participant in that felony.

24 If you find that the People have not proved beyond  
25 a reasonable doubt either one or both of those elements,

1 then you must find the defendant not guilty of murder in the  
2 second degree as charged in the first count.

3 On the other hand, if you find that the People  
4 have proved beyond a reasonable doubt both of those two  
5 elements, you must then consider an affirmative defense that  
6 the defendant has raised.

7 Remember, if you have already found the defendant  
8 not guilty of murder in the second degree as charged in this  
9 count, you will not consider the affirmative defense. Under  
10 our law, it is an affirmative defense to murder in the  
11 second degree as charged in this count that, number one, the  
12 defendant did not commit the homicidal act or in any way  
13 solicit, request, command, importune, cause, or aid the  
14 commission thereof; and, two, that the defendant was not  
15 armed with a deadly weapon or any instrument, article, or  
16 substance readily capable of causing death or serious  
17 physical injury and of a sort not ordinarily carried in  
18 public places by law abiding persons; and, three, that the  
19 defendant had no reasonable ground to believe that any -- to  
20 believe that any other participant was armed with such a  
21 weapon, instrument, article, or substance; and, four, that  
22 the defendant had no reasonable ground to believe that any  
23 other participant intended to engage in conduct likely to  
24 result in death or serious physical injury.

25 Under our law the defendant has the burden of

1 proving an affirmative defense by a preponderance of the  
2 evidence. In determining whether the defendant has proved  
3 the affirmative defense by a preponderance of the evidence,  
4 you may consider evidence introduced both by the People and  
5 by the defendant.

6 A preponderance of the evidence means the greater  
7 part of the believable and reliable evidence; not in terms  
8 of the number of witnesses or the length of time taken to  
9 present the evidence but in terms of its quality and the  
10 weight and convincing effect it has.

11 For the affirmative defense to be proved by a  
12 preponderance of the evidence, the evidence that supports  
13 the affirmative defense must be of such convincing quality  
14 as to outweigh any evidence to the contrary; therefore, if  
15 you find that the defendant has not proved the affirmative  
16 defense by a preponderance of the evidence, then based upon  
17 your initial determination that the People had proved beyond  
18 a reasonable doubt the elements of murder in the second  
19 degree, you must then find the defendant guilty of that  
20 crime as charged in the count.

21 On the other hand, if you find that the defendant  
22 has proved the affirmative defense by a preponderance of the  
23 evidence, then you must find the defendant not guilty of  
24 murder in the second degree on this count.

25 That completes the reading of the count, so I ask

1 all of you to return once again to the jury room. Thank  
2 you.

3 (Jury exited the courtroom.)

4 THE COURT: All right. That's it.

5 (Jury deliberating.)

6 (Luncheon recess.)

7 A F T E R N O O N S E S S I O N

8 (Defense Attorney Klein conferred with defendant.)

9 THE COURT: Let's go on the record, first. Primo.

10 THE COURT CLERK: Case on trial continues. All  
11 parties are present. The defendant is present. The jurors  
12 are not.

13 THE COURT: Thank you. We have received a note  
14 from the jury indicating that they have reached their  
15 verdict. Are both sides ready?

16 MR. KLEIN: Yes.

17 MR. BOGDANOS: Yes.

18 THE COURT: Thank you. May we have the twelve  
19 deliberating jurors and the two alternate jurors as well.

20 THE COURT OFFICER: Jury is entering.

21 (Jury entered the courtroom.)

22 THE COURT: You may all be seated.

23 THE COURT CLERK: Case on trial continues. All  
24 parties are presented. The defendant is present. All  
25 jurors are present and properly seated.

Verdict

1207

1 THE COURT: You may proceed.

2 THE COURT CLERK: Would the foreperson please  
3 rise. Have you agreed upon a verdict?

4 THE FOREPERSON: Yes, we have.

5 THE COURT CLERK: How say you as to the first  
6 count of the indictment charging Mark Richardson with the  
7 crime of murder in second degree, guilty or not guilty?

8 THE FOREPERSON: Count No. 1 murder in second  
9 degree, guilty.

10 THE COURT CLERK: How say you as to the second  
11 count of the indictment charging Mark Richardson with the  
12 crime of murder in the second degree, guilty or not guilty?

13 THE FOREPERSON: Not guilty.

14 THE COURT CLERK: How say you as to the third  
15 count of the indictment charging Mark Richardson with the  
16 crime of robbery in first degree, guilty or not guilty?

17 THE FOREPERSON: Guilty.

18 THE COURT CLERK: How say you as to the fourth  
19 count of the indictment charging Mark Richardson with the  
20 crime of robbery in second degree, guilty or not guilty?

21 THE FOREPERSON: Guilty.

22 THE COURT CLERK: How say you as to the fifth  
23 count of the indictment charging Mark Richardson with the  
24 crime of sexual abuse in first degree, guilty or not guilty?

25 THE FOREPERSON: Not guilty.

Verdict

1208

1 THE COURT CLERK: Thank you. You may be seated.

2 Listen to your verdict as it stands recorded each  
3 of you say through your foreperson that you find  
4 Mark Richardson guilty of murder in the second degree under  
5 the first count; not guilty of murder in the second degree  
6 under the second count; guilty of robbery in the first  
7 degree under the third count; guilty of robbery in the  
8 second degree under the fourth count; and not guilty of  
9 sexual abuse in the first degree under the fifth count and  
10 so say you all.

11 THE COURT: You may poll the jury.

12 THE COURT CLERK: Listen to your verdict as it  
13 stands recorded each of you say through your foreperson that  
14 you find Mark Richardson guilty of murder in the second  
15 degree under the first count; not guilty of murder in the  
16 second degree under the second count; guilty of robbery in  
17 the first degree under the third count; guilty of robbery in  
18 the second degree under the fourth count; and not guilty of  
19 sexual abuse in the first degree under the fifth count.  
20 Juror No. 1, is that your verdict?

21 JUROR NO. 1: Yes.

22 THE COURT CLERK: Juror No. 2, is that your  
23 verdict?

24 JUROR NO. 2: Yes.

25 THE COURT CLERK: Juror No. 3, is that your



Verdict

1209

1 verdict?

2 JUROR NO. 3: Yes.

3 THE COURT CLERK: Juror No. 4, is that your  
4 verdict?

5 JUROR NO. 4: Yes.

6 THE COURT CLERK: Juror No. 5, is that your  
7 verdict?

8 JUROR NO. 5: Yes.

9 THE COURT CLERK: Juror No. 6, is that your  
10 verdict?

11 JUROR NO. 6: Yes.

12 THE COURT CLERK: Juror No. 7, is that your  
13 verdict?

14 JUROR NO. 7: Yes.

15 THE COURT CLERK: Juror No. 8, is that your  
16 verdict?

17 JUROR NO. 8: Yes.

18 THE COURT CLERK: Juror No. 9, is that your  
19 verdict?

20 JUROR NO. 9: Yes.

21 THE COURT CLERK: Juror No. 10, is that your  
22 verdict?

23 JUROR NO. 10: Yes.

24 THE COURT CLERK: Juror No. 11, is that your  
25 verdict?

1 JUROR NO. 11: Yes.

2 THE COURT CLERK: Juror No. 12, is that your  
3 verdict?

4 JUROR NO. 12: Yes.

5 THE COURT CLERK: Your Honor, the jury has been  
6 polled.

7 THE COURT: Thank you.

8 Ladies and gentlemen, just a few more words and I  
9 will let you go. I want to thank all of you for your  
10 service on this case. Part of my job, of course, is to  
11 keep an eye on things as we go along but I certainly thought  
12 this group was focused and attentive throughout.

13 I mean the stakes are very high. You really can't  
14 get any higher. I think you all understood that, and I am  
15 certainly satisfied you all gave the case careful  
16 consideration. You have been down here for what probably  
17 seems like weeks and weeks so you had a chance to see how  
18 our system works firsthand.

19 You might not agree with me right now but if you  
20 think about it over time, I think you will agree that our  
21 system does work pretty well. I can tell you in this  
22 particular case we had really the highest level of advocacy.  
23 Both sides were well prepared and certainly made all the  
24 legal arguments, many of which were behind the scenes, that  
25 needed to be made; and it was a pleasure to work with them.

1 They are a credit to the profession, all of them; all three  
2 of them.

3 I also like to remind juries that we have a  
4 tremendous staff, folks who work here. This is a tough  
5 environment. Look at this place. It is not the most  
6 comfortable place to work but the officers here led by  
7 Sgt. Lovrich, they perform at a very high level of  
8 professionalism. I am sure you were treated with courtesy  
9 and respect throughout your time here.

10 The reporters, Penelope Messina right in front of  
11 me and her partner Glenn Merola, it is incredible how they  
12 can take down all this stuff without missing a beat.

13 Our clerk Primo Torres just got back this week. I  
14 know that his house was flooded out in New Jersey but he  
15 still managed to come in. The brains of the operation  
16 John-Paul Mayer my law clerk, without him I probably would  
17 have to retire but all in all, it -- we can come down here  
18 everyday because we believe that something important is  
19 happening in this courtroom and in the other courtrooms  
20 across the way; but its folks like yourselves who have the  
21 final vote. You make the system what it is.

22 It's been my honor really to be able to preside  
23 over these trials all these years. I know the system works.  
24 I don't think any of us could come up with a better one if  
25 we tried to invent one; but again it's only when the

1 citizens are willing to step forward and do the heavy work  
2 that it makes -- that's what makes the system work so no one  
3 is going to give you any kind of an award when you leave,  
4 just a quiet pat on the back if you will for your service  
5 here; and the reward I think I mentioned this at the outset  
6 is we don't ask you to come down again for eight --

7 THE COURT CLERK: Eight years.

8 THE COURT: So there will be plenty of time to get  
9 ready for the next time. I won't be here I don't think, but  
10 who knows. Maybe I will.

11 For those who are -- who would like to ask a few  
12 questions if you wait behind in the jury room, I'll try to  
13 come in and then try to answer those questions. For  
14 everybody else, you are free to go and thanks again. That's  
15 it.

16 (Jury exited the courtroom.)

17 THE COURT: A date Mr. Klein?

18 MR. KLEIN: How is October 27th? It's a Thursday.

19 THE COURT: That's fine.

20 MR. BOGDANOS: Judge, I would ask the defendant be  
21 remanded.

22 THE COURT: Yes, if he is not already, he is now  
23 remanded. 10/27.

24 MR. KLEIN: What time, Judge?

25 THE COURT: In the morning.

1 MR. KLEIN: Okay.

2 MR. BOGDANOS: 9:45 is that good?

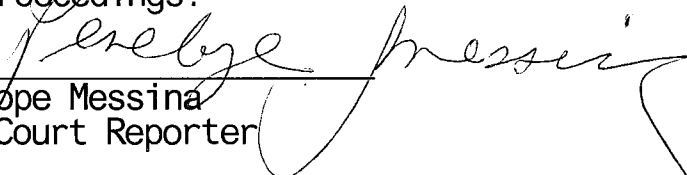
3 THE COURT: Yes, please. Are there any jurors  
4 waiting to --

5 THE SERGEANT: They are all back there.

6 (Case adjourned to October 27, 2011.)

7 oOo

8  
9 I hereby certify the foregoing to be a true and  
10 accurate transcript of the original stenographic record  
11 in the above proceedings.

12   
13 \_\_\_\_\_  
14 Penelope Messina  
15 Senior Court Reporter  
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SUPREME COURT NEW YORK COUNTY  
CRIMINAL TERM PART 45

THE PEOPLE OF THE STATE OF NEW YORK

INDICTMENT #  
3534/08

-against-

MARK RICHARDSON,

Defendant Sentence

111 Centre Street  
New York, New York 10013  
October 27, 2011

B E F O R E:

THE HONORABLE BRUCE ALLEN, J.S.C.  
JUSTICE OF THE SUPREME COURT

A P P E A R A N C E S:

For the People: CYRUS R. VANCE, ESQ.  
District Attorney New York County  
New York, New York  
By: Matthew Bogdanos, Esq.  
(For the People)

For the Defendant:

THE LEGAL AID SOCIETY  
By: Thomas Klein, Esq.  
New York, New York  
(Attorney for defendant Mark Richardson)

Lourdes Torres-Fuster, Senior Court Reporter

1 COURT CLERK: This is Number 3 on the calendar, 3534  
2 of'08, Mark Richardson.

3 MR. KLEIN: Legal Aid Society by Thomas Klein.

4 MS. LEGLER: Sara Legler.

5 MR. BOGDANOS: And, Matthew Bogdanos for the People.  
6 Good morning, your Honor.

7 THE COURT: Good morning, everyone.

8 Good morning, Mr. Richardson.

9 THE DEFENDANT: Good morning.

10 THE COURT: Are both sides ready to proceed?

11 MR. KLEIN: Yes.

12 MR. BOGDANOS: Yes.

13 COURT CLERK: Mr. Richardson--

14 THE COURT: Well, before we get to the actual sentence  
15 there are a couple of preliminary matters.

16 MR. KLEIN: Yes. The defendant had filed a 3.30 motion  
17 asking that the verdict be overturned on the grounds --  
18 well, first of all, I should say that in the motion itself  
19 there was an allegation about ineffective assistance of  
20 counsel and I spoke to the defendant about that. He does  
21 not want that to be part of the motion in any way and he's  
22 actually asking that part be withdrawn.

23 But, there was an allegation about the defendant's  
24 constitutional rights having been violated during the trial  
25 because of the failure to provide any kind of Brady remedy

1 for what we perceive to be, Mr. Richardson and his lawyers  
2 perceive to be as violations of the defendant's Federal and  
3 New York rights under the Brady doctrine and certainly we  
4 do adopt that and I had told Mr. Richardson, yes, we're  
5 going to adopt that as we do think that it was wrong the  
6 Court's ruling with regard to the Brady issues not only  
7 in-- well, not only in substance but also that it made it  
8 really impossible for us to show some things that we  
9 thought were critical and which actually existed in the  
10 case.

11 One, that there had been other people who got in and  
12 out of the house and had access to the house and may have  
13 been the actual perpetrators of the crime.

14 And, two, that after the time that the prosecution  
15 allege that the defendant had killed the victim or  
16 participated in the death of the victim that another  
17 individual, at least one other individual we know, had gone  
18 into the crime scene and therefore the integrity of the  
19 crime scene certainly may have been compromised.

20 And, with the Court's ruling that no DD5s could had  
21 come into evidence in any way did make it impossible for us  
22 to put forward to the jury part of the complexity of what  
23 we actually thought existed around this case and that's why  
24 we join in Mr. Richardson's motion.

25 THE COURT: Thank you.



1 And, Mr. Bogdanos.

2 MR. BOGDANOS: Yes, your Honor.

3 Although the People were not served with a copy of the  
4 motion the Court was kind enough to let the People read the  
5 defendant's motion this morning here in court.

6 There's nothing new in the motion that hasn't been  
7 addressed before so the People adopt all of our earlier  
8 argument with regard to the defendant's claim about Brady,  
9 alleged Brady violations, specifically late disclosure.

10 It is clear that the motion itself is a boiler plate  
11 Rikers Island motion so there was some things in there that  
12 may or may not have been intended.

13 There was a claim of a Rosario violation. The People  
14 oppose that in any way, shape or form. We engaged in an  
15 open type discovery with Mr. Klein in this case and so  
16 there was absolutely no Rosario violation nor Mr. Klein  
17 ever claimed one to the extent that that is a new  
18 allegation and not just like you check the wrong box when  
19 he was printing it out, Mr. Richardson did.

20 So, the People are responding in that way.

21 For all of the other rest of the motion the People  
22 adopt my earlier response.

23 THE COURT: Yes. The motion itself is denied.

24 And, of course, the issue itself is suffice and may be  
25 raised on appeal.

1 MR. KLEIN: We are ready to proceed with the predicate  
2 felony statement.

3 COURT CLERK: I don't have one.  
4 (Hanging).

5 COURT CLERK: Ready?

6 MR. KLEIN: Yes.

7 COURT CLERK: Mr. Richardson, the District Attorney's  
8 office has filed a predicate felony statement stating that  
9 you have previously been convicted of a felony.

10 Have you received a copy of that statement?

11 THE DEFENDANT: Yes.

12 COURT CLERK: The statement sets forth the date and  
13 place of the felony conviction. The statement reads as  
14 follows:

15 On December 6, 2002 in Supreme Court in New York County  
16 in the State of New York you were convicted of a felony of  
17 attempted sale of controlled substance in the third  
18 degree. And, on December 6, 2002 in Supreme Court New York  
19 County State of New York you were convicted of the crime of  
20 attempted sale of a controlled substance in the third  
21 degree. And, on March 31, 2000 in Supreme Court in the  
22 State of New York you were convicted of a felony of bail  
23 jumping in the first degree.

24 You may dispute any charge made in that statement. To  
25 do so you may specify a particular charge.

1 Do you wish to dispute any charge made in that  
2 statement?

3 THE DEFENDANT: No.

4 COURT CLERK: Do you challenge the constitutionality of  
5 your prior conviction?

6 THE DEFENDANT: No.

7 COURT CLERK: Thank you.

8 THE COURT: Very well.

9 Mr. Richardson is adjudicated a predicate felon and we  
10 may proceed with sentencing.

11 MR. BOGDANOS: If I could ask the Court to indulge me.  
12 The family had told me they were beyond security just a few  
13 moments ago. They are not here yet.

14 I had notified counsel and the Court that they wanted  
15 to make a victim impact statement so I beg the Court's  
16 indulgence. I apologize. I really didn't think they  
17 wouldn't be here.

18 (Pause).

19 MR. BOGDANOS: I do have five family members who would  
20 like to make a statement, victim impact statement.

21 I have instructed all of them on the proper parameters  
22 and I'm confident they will all stay within those proper  
23 parameters, two grandchildren, two brothers and a daughter.

24 THE COURT: I take it you would prefer to have them  
25 speak first?

1 MR. BOGDANOS: Yes, please.

2 If that's all right with the Court.

3 THE COURT: Yes.

4 Are you ready, Mr. Klein?

5 MR. KLEIN: Yes.

6 THE COURT: You may call them one at a time, Mr.  
7 Bogdanos.

8 I'm going to turn on the microphone so they can speak  
9 there at the podium.

10 MR. BOGDANOS: State your full name for the record,  
11 indicate your relationship to the victim.

12 MS. GROGAN: Good morning, your Honor. My name is  
13 Renee Grogan. I am Helen Abbott's daughter. I'm her oldest  
14 child.

15 I just want to say that my family was deeply, deeply  
16 hurt by what happened to my mother, the cruelty of her  
17 being stabbed and beat up and strangled.

18 I mean, it was a hard crime for an elderly woman. It  
19 wasn't -- you know, he wouldn't like if somebody did that  
20 to his mother and I feel that it took emotional toll on all  
21 of us in our family and really took a toll on me.

22 (Crying).

23 It took a toll on me and it's hard. I miss my mother  
24 and I ask that no one should have to go through something  
25 like that. I mean, if she's 69 years old let her die of

1 natural causes not in the hands of that monster there that  
2 beat my mother to a pulp.

3 But, I just want to say if I can may I show you  
4 something, the toll that it took on me?

5 THE COURT: Of course.

6 MS. GROGAN: I would like to let you see what happened  
7 with me and how it deteriorated me. I'm going to show  
8 you.

9 (Takes off her wig in open court).

10 I lost all my hair for all the stress and emotion that  
11 we had to go through with our family with this. I mean, it  
12 took, I mean it broke all of us down and it was all the  
13 worriation that I have for not knowing who was the killer.

14 This is my hair because of the killer and the person  
15 that, you know, did this to our mother. So right now I'm  
16 really, really it's deteriorating me for all the worry.

17 But, I'm happy today to say that I hope this monster  
18 stays in jail for the rest of his life. He needs to stay  
19 there so he won't be able to hurt no one else in this world  
20 because he's a monster. He is a monster and that's what I  
21 want to say to represent my family.

22 I hope this never happens to know one else again.

23 Thank you, your Honor.

24 THE COURT: Thank you, ma'am.

25 MR. HOWARD: Robert Lee Howard, III.

1 I am Helen Abbott's grandson and I want this man to  
2 stay in jail for the rest of his life. If they let him out  
3 one of your family member will be a victim from this man.  
4 I'm very up set that my grandmother is gone out of my life.

5 I feel -- I hope he stays in jail for the rest of his  
6 life.

7 MR. GROGAN: My name is Richard Grogan. I'm Helen  
8 Abbott's grandson.

9 I just want to say to you you took a very important  
10 life out of our whole life and it's nothing you can do that  
11 will bring her back. There is nothing that we can do to  
12 bring her back. I just want to say, what was going through  
13 your head when you were doing that? Like, what was you  
14 thinking an elderly woman that couldn't defend herself?

15 All she wanted to do is be happy, tell jokes. You  
16 know, you took that away from her. I used to live in the  
17 same projects with my grandmother. I'd see her everyday.

18 You know, the last time I saw my grandmother is when I  
19 had my kids with me. That's the last time they seen their  
20 grandmother. She gave them a dollar. Now they won't, when  
21 they grow up they won't even see their grandmother no  
22 more. The only grandmother is my mother right here.

23 You know, it's sad. It's sad to take somebody's life  
24 away and the way you did it she didn't deserve that.

25 Now I hope at night I hope you really dream about it.

1 I hope you can't sleep and I hope everybody that is in  
2 there do the same thing you did to my grandmother to you.

3 Look at me in the eye.

4 MR. BOGDANOS: No. No.

5 MR. GROGAN: Thank you, your Honor.

6 THE COURT: Thank you.

7 MR. FRANKLYN: Joseph A. Franklyn, Helen Abbott's  
8 brother.

9 This is really a tragic thing that happened to my  
10 sister. You know, I was in a war, Vietnam war, and I  
11 didn't do an action like that, you understand. And, when  
12 my family go through things like that, you know, you lose  
13 your brother, sister, especially a mother, sister, whatever  
14 in a tragic way that was done to her it wasn't right at all  
15 and action should be taken.

16 You know, when I came from Vietnam years ago she really  
17 helped me out a whole lot. I went through a lot of  
18 changes. The way that happened shouldn't happen to  
19 nobody's family like that.

20 You know, he should be recognized and what he got to go  
21 through now should be definitely permanent.

22 You know, it would take me an hour to say what I got to  
23 say but, you know, he won't listen to nobody. My family  
24 went through a lot of things. You understand what I mean?

25 But, come on now, does he have a mother?

1 (Crying).

2 Would he like something like that happen to his mother  
3 like this or anybody in his family? It's not good.

4 I've been in war, a decorated veteran, nothing happened  
5 like that to my unit.

6 That's all I got to say.

7 THE COURT: Thank you, sir.

8 Anyone else, Mr. Bogdanos?

9 MR. BOGDANOS: One more, her brother.

10 MR. WILSON: Kenneth Wilson, your Honor.

11 I'm Helen's adopted brother. I can't express how I  
12 feel because she spent some real good time with me. I  
13 remember when I was going through a lot of changes I was  
14 going down a spiral. When I got put out of my house she  
15 adopted me. She took me in. She adopted me as a brother.  
16 When I was homeless she fed me. If I needed a shoulder to  
17 cry on she was there for me.

18 I mean, it's like a piece of my heart is gone and I can  
19 never get back.

20 I can never express how I feel right now because the  
21 love that she had was deep and the love that I had for her  
22 even though I was not even related to her by birth but she  
23 loved me like a sister love a brother and I loved her like  
24 that. She never got a chance to see the impact she had on  
25 my life because now I'm a licensed minister now and I'm



1 reaching out to people and whatever this man did, I know he  
2 has problems, but he should be put in a position where he  
3 can never take someone's life away because he can never get  
4 back what he took, never.

5 Thank you.

6 THE COURT: Thank you, sir.

7 MR. BOGDANOS: That's it, your Honor.

8 COURT CLERK: Mr. Richardson, you are before the Court  
9 for sentencing following your conviction after trial for  
10 the crime of Murder in the Second Degree, Robbery in the  
11 First Degree, first count under Count 3, and Robbery in the  
12 Second Degree, forth count.

13 Before sentence the Court will allow you, your attorney  
14 and the District Attorney an opportunity to address the  
15 Court with any matter relevant to sentence.

16 For the People.

17 MR. BOGDANOS: Yes, your Honor.

18 It is impossible to follow the words of the family so  
19 let me be more precise.

20 Twenty five years to life isn't enough for someone with  
21 his record.

22 Twenty five years to life isn't enough for someone with  
23 seven felony convictions.

24 Twenty five years to life isn't enough for someone  
25 whose first robbery was 1979. His second robbery was

1 1984. His third conviction for robbery was 1989. And, on  
2 and on it goes.

3 Twenty five years to life isn't enough for that kind of  
4 a record.

5 Twenty five years to life isn't enough and won't bring  
6 back a great-grandmother to eight or grandmother to seven,  
7 a mother to Renee, Norman, Joseph and Cheryl.

8 Twenty five years to life will not bring what Macbeth  
9 called even-handed justice.

10 It will not undo the last moment of Helen Abbott's  
11 life. It will not undo the 22 stab wounds, the beating,  
12 the strangulation with the electric cord.

13 Twenty five to life will not undo any of those things.

14 Twenty five to life will not explain how his saliva or  
15 sweat got on her naked body.

16 If justice is the hope of all who suffer and the dread  
17 of all who wronged, well twenty five to life isn't enough  
18 to undo either of those things.

19 In this case twenty five to life isn't enough to  
20 capture the horror of what the defendant did.

21 I know your Honor does not need a reminder of how Helen  
22 Abbott's life was ended at the hands of the defendant.

23 Each of us in this courtroom who was present for the  
24 evidence when it was being offered whether we wanted it or  
25 not had a glimpse into the very debts of human depravity.

1           We were given a brief but unforgettable look into the  
2 absolute worst of a human condition.

3           Twenty five years to life will not even begin to wash  
4 away the horrors, the demons, from what the defendant  
5 did.

6           Absolute justice the law does not concern itself but a  
7 relative justice the law knows some.

8           So, in this case the best we, by "we" I mean society  
9 and justice can do is twenty five to life and so I ask your  
10 Honor to impose that sentence on this defendant as well as  
11 the maximum on each of the robbery counts because few if  
12 any people who have come into this building have ever  
13 earned it more.

14           Thank you.

15           THE COURT: Thank you, Mr. Bogdanos.

16           Mr. Klein.

17           MR. KLEIN: Your Honor, I could talk to you about the  
18 crimes here, about how no one actually knows who really  
19 committed what inside of that house and I can talk to you  
20 about how, although, the legislature says the penalties of  
21 intentional murder and felony murder may be the same that  
22 that is not always appropriate. Or, I could talk about my  
23 client about his own life and tell you things that I  
24 learned about him, how a drug habit that began at a very  
25 early age led him to situations that obviously he wish he

1 never was in. Or, I could talk to you about his family  
2 and I could do that extensively about people who love him,  
3 who are themselves loving people, about a brother, a wife  
4 and a mother. Especially perhaps about a brother who  
5 called me weekly to ask what was going on with his  
6 brother's case. A mom who always stood by him and a wife  
7 who has always been by his side. All folks who saw  
8 something, a basic worth in their son, in their brother, in  
9 their husband. Or, I could talk to you about what I  
10 intuited and what the District Attorney in this case  
11 actually confirmed to me while he was in jail. He's been  
12 in jail for a long time in Rikers. He was pretty well  
13 liked by almost everybody there. He was genuinely,  
14 extremely well behaved.

15 In fact, as the Court recalls there was at some point  
16 some discussion about an informant and how maybe the  
17 informant had to be moved. One of the reasons he might be  
18 moved is the defendant was so well liked. He was even well  
19 liked by corrections officers who might side with him  
20 against the informant or something like that.

21 But, it was clear that in three years of confinement  
22 the defendant didn't rule his section by fear or get  
23 involved in any kind of gang activity. He was well  
24 respected as a senior member of that society which is not  
25 simply made up of a dishonorable man.

1 I only choose to talk to you, your Honor, about  
2 something else and that what I know best which is what Mr.  
3 Richardson gave me because he actually gave me something  
4 enormous. This is what I know best and it's also what I  
5 think reveals him to me and I hope to the Court.

6 I should tell you about the context. Obviously Mr.  
7 Richardson and I have been involved in a three-year  
8 struggle. Often an interpersonal struggle. We had our  
9 highs and lows. To say that at times it has been  
10 conflictual, repeat to say, very little.

11 Obviously, as in any three-year long relationship there  
12 have been periods of estrangement, periods of alienation  
13 and I even, I dear say, very significant periods of  
14 intimacy that I will never forget.

15 Primarily, though, there was always a challenge coming  
16 from him. There was, hey, Mr. Klein, what's the theory  
17 here that you're going forward with? Hey, Mr. Klein,  
18 what's the argument that you are going to raise for  
19 suppression of the statements? And, Mr. Klein, what were  
20 the acts that were done by the detectives involved in the  
21 case, how are you going to talk about that? Mr. Klein,  
22 what's with the body temperature? Mr. Klein, what does our  
23 pathologist say? Mr. Klein, what does all of the evidence  
24 in this case actually show? Mr. Klein, what's with the  
25 Brady motion, what are you doing about that?

1           And, he would constantly demand explanations and  
2           basically he would demand that I work direct on his  
3           behalf.

4           What was interesting in this relationship was that he  
5           was never making these demands in a winding fashion but it  
6           was more as a challenge I always thought to me.

7           He would say, what are you doing anyway, Mr. Klein, are  
8           you just going through the motions and, therefore, are you  
9           simply the personification of the stereotype of a public  
10          defender who pays lip service to representing people who  
11          are charged in horrendous crimes or are you actually going  
12          to fight for me and actually do what you proclaim you do  
13          for clients?

14          Mr. Richardson would even say to me, he would say, you  
15          know, Klein, I even know about your reputation because we  
16          did spend three years together. He'd say, I know all about  
17          you. Everybody says you're good, you're experienced and  
18          everyone says you're arrogant too. He'd say to me, you  
19          know, it is easy to ride on all of that whether you really  
20          deserve your representation or not will define you. And,  
21          he would always kind of say to me that, you know, your  
22          representation and who you say you are, well, that just  
23          gives you the right to take on this assignment. He'd say  
24          to me that just gives you the right to take the test and to  
25          see whether you will actually put in practice what you

1       proclaim you believe your job is.

2               But, then he would say to me but only if you are, in  
3 fact, what you think you are then you deserve to be called  
4 a public defender. He'd say, let's see if you're going to  
5 put it all on the line here, if you're going to do the  
6 work. Let's see if you will push yourself, spend every  
7 weekend on this case. Let's see if you're going to fight  
8 this case to thin nail regardless of how or perhaps because  
9 of how unattractive some of the facts of this case may  
10 appear and how unattractive I myself, that is Mr.  
11 Richardson, may appear to others and let's see, Mr. Klein,  
12 if you're going to treat even me with respect.

13               He would say if you do that, here is what I understood  
14 him to be saying, if you do that, if I see that, if I'm  
15 confident that that's what you are really are about then I  
16 will entrust my life to you. I'm not going to ask for 18B  
17 although everyone tells me in a murder case you always  
18 should. And, then if you actually do all of that then you  
19 have a right to call yourself what people say you are which  
20 is an honest public defender which, of course, I myself  
21 consider one of the highest compliments that can ever be  
22 given by a criminal defendant.

23               Now, after losing this case, I mean I lost his case,  
24 after choosing a losing argument, after choosing a losing  
25 tragedy, Mr. Richardson did just that. He called me and he

1 said you know, Klein, I want you to know something, you are  
2 my lawyer forever because you were there for me despite of  
3 anything. And, I felt that what he was really saying was  
4 because you know what, Klein, it's true you really are a  
5 public defender which I consider an enormously high  
6 compliment and he gave me that gift and for that I will be  
7 forever grateful.

8 And, in giving that gift to me to his losing lawyer I  
9 think he realized himself in a very fundamental way as a  
10 very complex, thoughtful and at times very caring human  
11 being even one with a great spirit of generosity and  
12 because of all this I think he's worthy of the Court's  
13 careful consideration in fashioning an appropriate  
14 sentence.

15 THE COURT: Thank you, Mr. Klein.

16 Mr. Richardson, you also have a right to make a  
17 statement before I sentence you.

18 THE DEFENDANT: All right.

19 THE COURT: If you wish to do so we'll put the  
20 microphone up. Thank you.

21 THE DEFENDANT: First, I'd like to say to the family,  
22 the Abbott family, that my heart goes out to your loss of  
23 your mother. No person, no human being should lose a love  
24 one, a parent, a mother, because they say paradise is at  
25 the foot of a woman. Meaning reverence is to the woman



1 that put us in this existence.

2 My heart truly goes out to you for your loss and I have  
3 a mother also and when I look at her and I think about the  
4 situation that your family is going through if my family  
5 was to go through the same thing I would probably go maybe  
6 even crazier than what you all are going through right now.

7 My heart sincerely goes out. I pray for yah that you  
8 might find tranquility that she's in a better place.

9 I also want you to know that I am not the culprit in  
10 the crime that was committed. I was there but I was not  
11 the one that participated in the death of your love one. I  
12 surely have nothing to do with that crime.

13 You know, the DA has done his job as far as feeling  
14 that he felt he had evidence to convict me for the crime.  
15 And, if this brings consoling to you I hope it does but the  
16 true consoling comes when you find the real culprit that  
17 hurt your loved one or murder your loved one.

18 For surely it was not myself and I pray that with the  
19 time that goes on now that you will find real consoling  
20 when you find the person or the D.A.'s office or the police  
21 find the person that truly committed this crime.

22 I don't doubt the D.A.'s job because the D.A.'s job is  
23 to convict, but also if they have evidence to show that it  
24 wasn't an individual that's being accused of a crime they  
25 suppose to pursue that issue to which I feel was not

1 done.

2 Like I said, my heart goes out to you, your  
3 grandchildren, the daughters, the brothers, but I hope  
4 you're truly confident when you find the culprit and I  
5 believe the D.A.'s office has that information on those  
6 individuals that are still out there that committed this  
7 crime.

8 And, that's all I have to say.

9 And, to the Court, you did your job as you suppose to  
10 have done it but I'm too totally innocent of these charges  
11 and that's all I have to say.

12 THE COURT: Thank you, Mr. Richardson.

13 MR. BOGDANOS: Your Honor, forgive the interruption.  
14 We didn't put on the record the absence of the interview.

15 I don't know if that should be on the record.

16 THE COURT: Well, we did discuss briefly off the record  
17 the fact --.

18 MR. KLEIN: There is no problem.

19 THE COURT: -- he wasn't produced for the interview.  
20 If he's not produced it does not mean that the sentencing  
21 could not go forward.

22 MR. KLEIN: Yes, thank you.

23 MR. BOGDANOS: Thank you.

24 THE COURT: Well, first of all, Mr. Richardson, I want  
25 to say that I never make a sentencing decision until the

1 very last moment.

2 I listened carefully to the family members and  
3 obviously we all feel great sympathy for them and we cannot  
4 undo what was done to Helen Abbott and their feelings are  
5 well expressed.

6 As you know the crime of Murder in the Second Degree  
7 carries a minimum of 15 to life and a maximum sentence of  
8 25 to life.

9 Mr. Bogdanos has argued that the maximum is appropriate  
10 in this case.

11 Mr. Klein although he didn't pick a number obviously  
12 he's arguing that something much less should be imposed.

13 It is true that the conviction was for felony murder as  
14 oppose to intentional murder and the evidence at the trial  
15 suggested that at least one other person was involved,  
16 nevertheless your guilt was proved beyond a reasonable  
17 doubt.

18 I accept the jury's verdict. I do not quarrel with it  
19 in any way. And, I am going to impose the maximum sentence  
20 of twenty five to life on the murder count.

21 On the lesser counts which run concurrent by operation  
22 of law the range goes up to 25 on the robbery. I'll pick  
23 20, plus five years post release supervision. That's on  
24 the Robbery in the First Degree.

25 On the Robbery in the Second Degree I'll pick 15 years,

1 plus the five years of post release supervision.

2 But, again, all of that runs concurrent to the top  
3 sentence of twenty five to life.

4 It was a hard fought trial. There was a long record  
5 and I can tell you that the Appellate Courts will look at  
6 the case very closely and the issue mentioned this morning  
7 can be one of the issues on appeal.

8 It was a horrible tragic night and you were involved.

9 You have 30 days to appeal.

10 And, you also must pay a court fee called a surcharge  
11 but you'll be given plenty of time to do that.

12 And, that's it.

13 MR. KLEIN: Your Honor, that can't be waived?

14 THE COURT: Not in this case.

15 MR. KLEIN: I'm notifying the defendant of his right to  
16 appeal and a notification of appeal will be filed on his  
17 behalf by the Legal Aid Society.

18 \*\*\*\*\*

19 (Proceedings were concluded)

20

21 I hereby certify the foregoing to be a true and  
22 accurate transcript of the original stenographic record in  
23 the above proceedings.

24   
25 Lourdes Torres-Fuster,  
Senior Court Reporter